

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, 21-CR-80 (AMD)
4 United States Courthouse
Brooklyn, New York

5 -versus- March 21, 2023
6 9:30 a.m.

7 DOUGLASS MACKEY,
8 Defendant.

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9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
10 BEFORE THE HONORABLE ANN M. DONNELLY
11 UNITED STATES DISTRICT JUDGE
BEFORE A JURY

12 APPEARANCES

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24 Proceedings recorded by mechanical stenography. Transcript
25 produced by computer-aided transcription.

1 (In open court.)

2 THE COURTROOM DEPUTY: All Rise.

3 THE COURT: Everyone can have a seat. We're still
4 missing a juror. There is no surprise, there is a lot of
5 traffic today. That juror is about 20 minutes away.

6 The second thing is, a juror asked Ms. Greene if she
7 was permitted to look up words she didn't understand.
8 Ms. Greene told her that she's not supposed to look up
9 anything. I don't know what words the juror doesn't
10 understand, but I don't think there is anything else to be
11 done about it, unless you want me to tell her she can look up
12 words in the dictionary. I think it's not a good idea, but I
13 just wanted you to be aware of it. Maybe it's something to
14 think of when you're presenting your case.

15 Then one other thing, just before I -- two other
16 things before I forget them. In cases I've had where people
17 have testified with a pseudonym or anonymously, I've always
18 given a little instruction before. And I understand that one
19 of the witnesses is going to be testifying using whatever his
20 Twitter name is or whatever the -- I need a book to look stuff
21 up too -- whatever his identity is. I'll give that standard
22 instruction before.

23 Then one other thing that came to my mind yesterday,
24 and perhaps it won't continue. I did notice in the
25 cross-examination of, I can't think of the woman's name from

1 Nebraska.

2 MR. PAULSEN: Ms. Amy Stephen.

3 THE COURT: There were some questions along the
4 lines of whether the defendant was a nice person, a good
5 person, and all those things. I think there is the
6 potential -- I know Judge Garaufis already ruled, and I said
7 yesterday I'm not going to revisit those rulings and the
8 reason I'm not is not because -- I've read them all and I
9 agree with them. Those kinds of questions, if they persist,
10 could lead to opening the door to some evidence that
11 contradicts that conclusion about the defendant.

12 It's just something that occurred to me yesterday.
13 I don't know if anybody has anything to say about that.

14 MR. PAULSEN: If I could be heard on that specific
15 point. On that particular point, there is evidence that we
16 have turned over to defense counsel in which the defendant
17 was, I'd say, not a gentleman to Ms. Stephen, kind of mocked
18 her behind her back. They talked about the importance of
19 recruiting her, of getting her to parrot out messages to her
20 followers. They frankly made fun of her when she got
21 divorced. Fairly unkind stuff that she's never seen.

22 Mr. Frisch, I think, used her to leave the
23 impression that the defendant was a gentleman to her. I think
24 the record is quite different than that. We wanted to bring
25 this to your Honor's attention, when the defendant takes the

1 stand, in part, because we wanted to go into that.

2 THE COURT: What is your position on it, first of
3 all? I haven't seen what exactly the --

4 What unkind things that they are talking among each
5 other about this lady?

6 MR. PAULSEN: In sum and substance they talked about
7 how important it was to flip her. And that when she got
8 divorced, in part because of it, they kind of made fun of it
9 behind her back. We didn't share that with her. We never
10 told her these things, these are private messages, but I think
11 it's contrary to the impression that was left in court
12 yesterday.

13 MR. FRISCH: Let me -- first of all, there is a
14 bigger issue than this, which is why I told your courtroom
15 deputy that it might be a good idea -- let me address this.

16 The reasons I asked those questions was because the
17 piece of the podcast that the Government has been permitted to
18 introduce, they put in the CD, they authenticated the CD
19 through Ms. Stephen. Then they'll play a snippet from this
20 podcast in March of 2016, was Mr. Mackey's view of the 19th
21 Amendment. I asked those questions in no way to create a
22 false impression, but to put the context, which I did through
23 Ms. Stephen, that it was a respectful and thoughtful
24 discussion of issues of the day, that it wasn't vituperative.
25 It wasn't -- we can take different meanings of the word

1 misogynist, but it wasn't hateful. It was thoughtful,
2 respectful.

3 THE COURT: I'm not familiar with the podcast.

4 MR. FRISCH: The podcast is about two hours and 40
5 minutes of these people, including this person known as
6 Dr. Allusion (ph) talking about all kinds of issues of the
7 day. It's kind of a seminar of various social issues that we
8 all read about in the papers.

9 THE COURT: 19th Amendment, though?

10 MR. FRISCH: At one point it comes up, a short
11 portion.

12 THE COURT: I hope that's not an issue of the day.
13 Any way, go ahead.

14 MR. FRISCH: I don't think it should be at the
15 trial, but so be it.

16 But in a very short portion of this two hour and 40
17 minute conversation where they are discussing, and this is why
18 I think this is important, because I don't think it's an issue
19 and shouldn't be an issue; however, they are having this
20 wide-ranging conversation of all kinds of social issues that
21 we all have various views on, different sides of the spectrum.
22 At one particular point Mr. Mackey expresses lack of support
23 for the 19th Amendment.

24 Now, Judge Garaufis ruled that could come in, and
25 that's the way it is.

1 What I wanted to bring out, what I was trying to
2 bring out through Ms. Stephen, is that this wasn't like some
3 rant or some rave. It came in the context of a thoughtful,
4 respectful conversation in which Mr. Mackey, which is his
5 right and it's all our right, to have ideas and work them out
6 in our head. That's what he was doing, and that's what I was
7 trying to bring out.

8 THE COURT: I'm not disputing any of that. The way
9 it struck me, and I have to look at the transcript again, but
10 it struck me that it was much more personal to her about his
11 treatment of her. And it's just something that -- the reason
12 I raised it, was because if it continues, I don't know -- like
13 I say, I have to look at the transcript again, but if it
14 continues it's in the nature of a character type, that he's a
15 nice person, a gentleman, respectful, and that -- I'm not
16 making a ruling, I'm just alerting you to the potential for
17 permitting the Government to respond to that characterization.

18 MR. FRISCH: It won't continue. I appreciate that.
19 I appreciate what your Honor has said.

20 At the same time, just for the record, I'm not
21 asking the Court to revisit Judge Garaufis' rulings. But our
22 view is that this case, and for reasons I'll get to when we
23 get to the next issue, in my view is a difficult case for the
24 Government to win.

25 THE COURT: Okay.

1 MR. FRISCH: Based on its theory. And what they can
2 win on, and the way they can get a conviction, is with the
3 allegations either in direct on their direct case or
4 cross-examining Mr. Mackey of inferences of racism and
5 misogyny because they are so inflammatory.

6 What I was trying to do with Ms. Stephen, I'm
7 repeating myself but I do want to make the record, was
8 establishing for the jury, help the jury understand that it
9 was a long, thoughtful, insightful conversation that was not
10 offensive to her, and to give it some perspective.

11 But I appreciate your Honor calling my attention to
12 a different view of it and making me aware of it.

13 THE COURT: It's fine. Are you planning to play
14 other portions of the podcast?

15 MR. FRISCH: Am I? No.

16 THE COURT: Let's put that aside for now.

17 If the Government has an application about being
18 permitted to ask those questions, I just need to look at the
19 transcript again. Is there something more that you want to
20 say about it? I don't think it's the key to the case. But I
21 haven't heard, I haven't seen the things you're talking about.
22 As I say, I haven't looked at the transcript to see exactly
23 what it was.

24 MR. PAULSEN: Yes, your Honor. We figured the
25 request was not ripe yet. If and when the defendant testifies

1 we would bring it to your attention. The question he asked
2 was: So you considered him a good kid? She said: Yes.

3 THE COURT: That's what I was focusing on.

4 But any way, I think this is something that nobody
5 is asking me to do at the moment, but it's something that I'll
6 consider.

7 What else did you want to raise?

8 MR. FRISCH: This morning, about 9:15, the
9 Government provided me with two new interview reports that I'm
10 seeing for the first time.

11 THE COURT: I can't hear you.

12 MR. FRISCH: This is a serious issue, so I'm going
13 to raise right now.

14 I've had about 30 minutes or so to think it through,
15 I haven't completely thought it through. But I think it's a
16 real problem.

17 There are two 302s that the Government provided me
18 for the first time this morning. I should have had them
19 before trial. One of them -- I ask they both be exhibits that
20 the Government provide the Court with copies; if not now, when
21 the Government is able to. Both interview reports of this
22 woman whose name came up on my cross-examination of
23 Mr. Cotler, Amy Karr. It looks like one is dated March 30,
24 2021, it's four pages, and the other is dated August 18, 2022.

25 THE COURT: I've got one from August 29.

1 MR. FRISCH: August 29 is the date of entry, but the
2 date of investigation is on the bottom.

3 For the purpose of making a record, I have not had
4 an opportunity yet to have an opportunity to think this
5 through completely in all the ways that this, in my view,
6 requires a mistrial. The substance of it, and I want to -- I
7 won't go on too long, but I do want to make the record -- is
8 that Ms. Karr is essentially in these 302s establishing our
9 defense, in a lot of significant major ways and some micro
10 ways.

11 Let me spend a couple of minutes making the record
12 with the understanding I haven't completely absorbed this.

13 THE COURT: Can I make a suggestion? If you haven't
14 completely absorbed it, let's press on if our jurors are here.
15 If you don't want to do that, that's fine.

16 MR. FRISCH: I would like to at least make a -- I'm
17 not going to go on in great length. This is really important.

18 THE COURT: I'm not suggesting that it's not. But
19 you're letting me know that you haven't, that you want a
20 mistrial but you haven't formulated --

21 MR. FRISCH: I can give you enough. I think it's
22 important to make this record now.

23 THE COURT: Go right ahead.

24 MR. FRISCH: Thank you. A part of our defense is
25 that Mr. Mackey posted these memes as a way of distracting the

1 Clinton campaign, understanding that he was so popular and
2 that essentially he was being watched, and that posting them
3 would distract the Clinton campaign. Before production of
4 these two 302s, what I knew about Ms. Karr was from
5 Mr. Cotler's 302, that Ms. Karr was in charge of monitoring
6 social media, that's it. I saw that and I asked him if that
7 was so. He recalled. I did not have an opportunity to
8 cross-examine him about his recollection of Ms. Karr's broader
9 role, nor did I have an opportunity to prepare my defense for
10 the following, based on the following facts.

11 Fact number one, the Clinton campaign became aware
12 of these types of memes and this type of misinformation three
13 months before the election, so that would put it in August,
14 number one.

15 Number two, the Clinton campaign was aware of stuff
16 posting, specifically that word is used in Ms. Karr's
17 interview.

18 Number three, on November 2, 2016, this BuzzFeed
19 article was published, I thought based on Professor McNeese's
20 tweet, but it appears when the Clinton campaign became aware
21 of these memes at some point they saw the merit of saturating
22 the media with information about this and it looks like the
23 Clinton campaign participated in some lesser or greater extent
24 in generating the BuzzFeed article, which of course is kind of
25 what Mr. Mackey thought might happen in a general sense.

1 Here is another piece that's very important. When
2 Ms. Karr brought this -- her job was to monitor social media
3 for misinformation specifically and these types of things, at
4 least that's what she did when she saw these memes apparently
5 as early as three months before she brought it to the
6 attention of her supervisors in the Clinton campaign who
7 didn't think it was very important, at least initially, I
8 think ultimately they realized that there was something they
9 needed to do. But the 302s reads as if she's a chicken little
10 telling the Clinton campaign that the sky is falling and
11 nobody is taking her seriously. It's consistent with our
12 defense as to the seriousness with which these memes might
13 have been taken or how they were intended.

14 They also say that there was no single influencer
15 who was doing this, that it appeared to be some kind of mass
16 attempt to flood social media with these things. There were
17 many people doing it and no one person was doing it.

18 For me the biggest piece of all of that is that this
19 didn't start on October 29, which is when I thought it started
20 from the 302s that I had, or on November 1st when Mr. Mackey
21 shared these two memes, but it had been going on for three
22 months.

23 Now, my last point, and I appreciate your Honor
24 allowing me to make the record. I don't know how this might
25 affect, might have affected in full my presentation of

1 Mr. Mackey's defense, how it might have affected my objections
2 to various pieces of evidence or various pieces of testimony,
3 including what might be coming today. I have no issue with
4 these three prosecutors, they've been good to work with.
5 However, the fact of the matter is, this is Brady material. I
6 should have had it in March of 2021 and again in August 2022
7 so that I could prepare my defense.

8 That's the reason why I haven't completely thought
9 it out in all the ways it's hurting Mr. Mackey.

10 THE COURT: The Brady aspect of it is?

11 MR. FRISCH: A number of Brady aspects of it. One
12 of which is that this happened, this started three months
13 before the memes that are the subject of this case. That's
14 one aspect.

15 THE COURT: So other people did a text-to-vote
16 thing?

17 MR. FRISCH: This was already on the radar. The
18 reason why that's important, is not that other people
19 committed the crime so how does that help you. It's the fact
20 that he's been painted as the influencer who knew that because
21 of the MIT study and otherwise, that this conspiracy could use
22 him as its front person to disseminate them. In fact, our
23 position is, this was as of October 29 this was already viral.
24 I opened on that. What I didn't know, not only was it known,
25 was it essentially viral or maybe half viral three months

1 before but the Clinton campaign was aware of it and they
2 didn't think it was very important until somebody decided,
3 yes, it is important we should do something about it.

4 The Buzzfeed article is very important. There are
5 chats that the Government will put into evidence where they
6 discuss the Buzzfeed article. It happens on November 2.
7 Within a day of Mr. Mackey sharing these two memes. In fact,
8 it looks like the Clinton campaign realized that their best
9 strategy was to get the media to cover this. And it appears
10 that they were in contact with Buzzfeed to generate, as part
11 of their efforts to generate media as kind of a
12 counter-information campaign. I think one of the lines here
13 was they believed it was necessary to flood the media.

14 Again, the other thing -- just to repeat and then
15 I'll stop, I appreciate your Honor allowing me to make the
16 record -- is that they were aware of people online, to use the
17 phrase, shit posting, that word is in the Clinton campaign's
18 knowledge. They were aware of that term, of what it means,
19 how people used it. And that's very consistent with our
20 defense. I think this is a serious problem.

21 THE COURT: I'll hear from the Government. I will
22 say, I'm a fast reader but I haven't quite absorbed each one
23 of these things.

24 What is it that you want to say in response?

25 MR. PAULSEN: Yes, your Honor. I'm rather perplexed

1 by the defense's argument here. One of the things the defense
2 said, I think in his opening, is that we actually don't
3 disagree in the facts in many respects, it's a matter of
4 conclusions you're drawing.

5 The first search warrant was turned over in discovery
6 noted that the knowyourmeme.com website noted these were
7 swimming around in the Internet as early as June 2016. We're
8 about to introduce today private group messages which show
9 that in mid September groups that the defendant was part of
10 started formulating their own versions of these. And that as
11 it approached the date of the election, they created more and
12 then were promulgating them.

13 It has always been clear that these things were out
14 in the dark corners of the Internet. We mentioned in the
15 search warrant it was on the Daily Stormer, the American Nazi
16 newspaper. All of our witnesses yesterday were all talking
17 about efforts to interrupt this scheme before the defendant
18 sent it.

19 Part of the reason that what the defendant did was
20 not terribly affective at the end, and it got such quick
21 attention, is that people in the Hillary Clinton campaign and
22 other individuals were seeing this percolating in the days
23 before the defendant did this.

24 I think our sense of the facts is entirely
25 consistent. The 302s he's referring to is an individual from

1 an intern from the Hillary Clinton campaign, who part of her
2 task was to look in the dark corners of the innocent.

3 THE COURT: Ms. Karr.

4 MR. PAULSEN: Yes. She's the individual referred to
5 by Mr. Cotler, the person who flagged for Mr. Cotler and Ms.
6 Rocketto, who did eventually realize it for what it was and
7 did something about it.

8 I believe Ms. Rocketto testified on direct she did
9 try to get media attention for it. She said they wanted to
10 call attention that this was happening and this was false. I
11 believe Mr. Frisch implied the people who likely texted the
12 vote, it happened after that coverage.

13 I don't think we disagree on the facts here.
14 Ms. Karr's 302 is not an individual we were going to call. I
15 would say it is a wildly inculpatory 302, but an individual
16 who was an intern and not interested in testifying, and so we
17 didn't call her.

18 I do not think this is a Brady issue. I don't think
19 it's remotely anything.

20 Some of the facts that Mr. Frisch raised to me
21 privately, that this references 4chan and other places where
22 these vote-by-text memes existed, this is testimony that will
23 come out in the documents today, and come out in the mouth
24 from of the cooperating witness. It is just true that these
25 things were in these other places in the Internet. And the

1 groups, like the groups the defendant belonged to, were
2 grabbing them from these places, in addition to certain groups
3 making them themselves.

4 I don't think this is -- this is the Government's
5 case. This is not a different factual narrative, it is our
6 factual narrative.

7 THE COURT: All right. Well, are you making a
8 motion for a mistrial or are you just putting it on my radar?

9 MR. FRISCH: Both. Let me add --

10 THE COURT: So are you making the motion?

11 MR. FRISCH: I'm making the motion for the mistrial.

12 THE COURT: I'm denying the motion now, but I do
13 want a chance to review in detail the statements and to review
14 the testimony.

15 I don't think at this point -- I'll surely give you
16 a chance to respond -- but it does not strike me that this is
17 Brady material. Because at least from my quick perusal of
18 these documents, this seems to be consistent with -- it's not
19 exculpatory material from my view, from what I'm looking at
20 and from what you're telling me. Much of what you were
21 arguing before is pretty much what you argued in your opening
22 statement. But I'm denying it at this point for two reasons.

23 First, because I haven't heard anything that
24 suggests to me that a mistrial is warranted.

25 But the second reason is, if there are arguments

1 that you want to refine or there is more that you want to say
2 about it, which was my impression, and I'd like to read the
3 documents in their entirety and look at the transcript of the
4 trial yesterday. I'm denying the motion at this point, but I
5 will consider additional arguments that you have to make about
6 it.

7 Is our juror here?

8 THE COURTROOM DEPUTY: Yes.

9 THE COURT: Is there anything else that anybody
10 wants to raise before we bring in the jury?

11 MR. FRISCH: Nothing new. Can I say one more thing
12 in 30 seconds with this issue?

13 THE COURT: You can take more than 30 seconds.

14 MR. FRISCH: I know your Honor is concerned about
15 the jury, I appreciate that. Two things that dawned on me.

16 Number one, this is coming from the Clinton
17 campaign. This is the purported, one of the purported victims
18 of this is the Clinton campaign.

19 Second, Ms. Rocketto I think yesterday talked about
20 her concern that these types of memes could particularly
21 affect African American and Hispanic voters and women, and yet
22 the campaign was already on it.

23 THE COURT: I just don't see how that is
24 exculpatory. You all know the case far better than I do. At
25 least, as I understand it, the concern that she expressed was

1 that voters would believe this, and that sounds to me like
2 what the campaign's concern was. But I'll give it more
3 thought. I'm not inclined to grant a motion for a mistrial
4 I'm certainly not going to do it now.

5 Anything more you wanted to say about it?

6 MR. FRISCH: Not at this particular moment.

7 THE COURT: Anything else from the Government?

8 MR. PAULSEN: Your Honor, only that we are in day
9 two of a trial. The individuals who were cross-examined, we
10 could attempt to bring them back.

11 THE COURT: There are -- if you want to -- if the
12 Government wants to call that witness, if you want to call the
13 witness, there are other things to be done. If you wanted to
14 reopen your cross-examination on -- the name escapes me, or
15 whoever that opinion was -- that's an option too. Those are
16 all remedies that I think, to the extent there is a violation
17 I'm not saying that there is, but there are things that you
18 could do to remedy whatever the issue is. A mistrial is a
19 drastic measure and it's one that should only be ordered as a
20 last resort.

21 Scheduling wise, I think I said yesterday we've got
22 another matter at lunch time. And then we were going to
23 discuss -- do you think that witness is going to testify
24 today? I'm trying to budget our time.

25 MR. PAULSEN: Your Honor, our expectation is that we

1 have five short witnesses, which we think could finish
2 reasonably quickly. Your Honor said you were going to set
3 aside 45 minutes for us to discuss the outstanding in limines,
4 then a large summary witness who will take up the afternoon.

5 THE COURT: That's fine. I think we'll continue
6 with that schedule in mind. I think this other matter will
7 take us about an hour. I think it's nice to let our court
8 reporter and courtroom deputy have lunch, and then we'll
9 convene. I'll tell the jury to come back 3:00 o'clock or 3:15
10 this afternoon.

11 MR. BUFORD: Your Honor, one last point, I'm sorry.

12 Our court reporter, Anthony, told me that he may
13 know one of our witnesses coming up, Michael Ryan. He knows
14 him personally because they live together on Staten Island. I
15 don't think it's an issue, I just wanted to raise it.

16 THE COURT: Are you concerned that the court
17 reporter might know one of the witnesses?

18 MR. FRISCH: I have no concern.

19 THE COURT: I think it should be fine.

20 To the extent we're discussing the most recent
21 letter that Mr. Frisch filed, I think there was -- at least I
22 had the sense or the hope that you resolved some of the things
23 amongst yourselves. Maybe you'll let me know before or you'll
24 continue to work on resolving the things without --

25 MR. PAULSEN: We'll continue to work. But we had a

1 conversation over the weekend where that letter would have
2 been longer but for that conversation.

3 THE COURT: So I shouldn't complain.

4 MR. PAULSEN: We'll continue to try.

5 (Jury enters the courtroom.)

6 THE COURT: Good morning everybody. Hard to get to
7 the courthouse today, I'm right there with you. Hopefully
8 that won't be a problem every day.

9 First of all, we're glad to have you back. I kept
10 you waiting a little bit. I forgot to mention this yesterday,
11 that occasionally you might be sitting back there thinking
12 what are those people doing there. Sometimes we're ironing
13 out some issues that will actually move the trial along a
14 little bit. Sorry to keep you waiting, but I think sometimes
15 there is a benefit to it. So anyway, we are ready to resume.

16 Are you ready to call your next witness?

17 MR. BUFORD: Yes, your Honor. The Government calls
18 Michael Ryan.

19 (Witness takes the witness stand.)

20 **MICHAEL RYAN**, called as a witness, having been first duly
21 sworn/affirmed, was examined and testified as follows:

22 THE COURTROOM DEPUTY: State your name for the
23 record.

24 THE WITNESS: Michael Ryan.

25 THE COURTROOM DEPUTY: Have a seat, Mr. Ryan.

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1 THE COURT: Good morning, Mr. Ryan.

2 THE WITNESS: Good morning, your Honor.

3 THE COURT: I want to give you a few instructions
4 before we begin. Our court reporter takes down everything
5 that you say, so don't talk too fast. Also, if a lawyer is
6 asking you questions let the person finish so we're not
7 talking over one another. Do your best to answer the question
8 that you're being asked. If there is something that you want
9 clarified or repeated, just let me know.

10 THE WITNESS: Okay.

11 THE COURT: Go ahead.

12 DIRECT EXAMINATION

13 BY MR. BUFORD:

14 Q Good morning, Mr. Ryan. Are you currently employed?

15 A Yes.

16 Q Where do you work?

17 A The New York City Board of Elections.

18 Q What is your position there?

19 A Executive director.

20 Q For how long have you held that post?

21 A Since August 2013.

22 Q Can you tell us generally what the New York Board of
23 Elections does?

24 A The New York City Board of Elections is the elections
25 administrator for the five boroughs of New York City. So we

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1 conduct the elections in each of the five boroughs.

2 Q Are those elections both state and federal?

3 A Yes.

4 Q From your work at the New York City Board of Elections,
5 are you familiar with the various methods by which voters in
6 New York city can cast their votes?

7 A Yes.

8 Q Are you familiar with the ways in which voters in New
9 York state can cast their vote?

10 A Yes.

11 Q How about voters in other states?

12 A Yes.

13 Q How did you become familiar the ways in which voters in
14 other states can cast their vote?

15 A Well, we work closely with the New York State Board of
16 Elections, as well as other election jurisdictions to
17 consistently exchange information with respect to best
18 practices. As well as, there are certain requirements by the
19 Help American Vote Act, HAVA, which sets requirements and
20 standards by which elections must be conducted.

21 Q Are you similarly familiar with the ways in which people
22 could vote both in New York City state and in other states in
23 the year 2016?

24 A Yes.

25 Q Directing your attention to the 2016 general presidential

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1 election. Was it possible for voters in New York City to cast
2 a ballot by text message in that election?

3 A No.

4 Q What were the ways in which a citizen could vote in New
5 York City?

6 A You'll hear phrases like voting by absentee, voting by
7 affidavit, or voting on the scanner. In either of those
8 formats, a voter is still required to fill out a preprinted
9 ballot and fill in the oval adjacent to the candidate of their
10 choice.

11 Q To your knowledge, was it possible to cast a vote
12 anywhere in the United States by text message in the general
13 presidential election of 2016?

14 A No.

15 Q What about casting a vote anywhere by posting a
16 particular hashtag on a social media account?

17 A No.

18 Q I'd like to show for the witness only what is marked for
19 identification as Government's Exhibit 1000. This is a
20 multi-page exhibit, so we'll scroll through and give you a
21 chance to look at it. Do you recognize this, Mr. Ryan?

22 A Yes.

23 Q Can you tell us generally what it is?

24 A That is the HAVA record, the voter registration record,
25 of Douglass Mackey.

MICHAEL RYAN - DIRECT - MR. BUFORD

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1 Q Did you have a chance to review this before your
2 testimony today?

3 A Yes.

4 Q Are the records contained in this document maintained in
5 the normal course of business by the New York State Board of
6 Elections?

7 A It's both the New York City Board of Elections and the
8 New York State Board of Elections.

9 Q I apologize, New York City?

10 A Yes, but the record is consistent in either event, but
11 yes.

12 Q And maintained in the normal course of business?

13 A Yes.

14 Q Accurate to the best of your knowledge?

15 A Yes.

16 MR. BUFORD: Your Honor, the Government offers
17 Government 1000.

18 THE COURT: Any objection?

19 MR. FRISCH: I do have an objection, if we can
20 approach?

21 (Continued on the next page.)
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SIDEBAR CONFERENCE

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1 (Sidebar conference.)

2 MR. BUFORD: We've redacted his date of birth.

3 MR. FRISCH: I'm sure it's me, but I thought they
4 weren't using this. I remember speaking to the Government
5 saying you're not putting this in evidence, are you? I
6 thought they said no, so I took it off my radar.

7 THE COURT: Can I see it?

8 MR. PAULSEN: I did have that conversation with you.
9 I'm sorry that I didn't -- I don't think it's a big deal
10 either way.

11 MR. FRISCH: Let me look at it again. When
12 preparing for Mr. Ryan, I didn't look at this again because I
13 didn't think it was coming in.

14 MR. BUFORD: The only thing we're going to show is
15 the last page.

16 MR. FRISCH: All you're going to put into evidence
17 is the last page?

18 MR. BUFORD: I can't only put in the last page, I
19 was going to show the last page. It reflects he voted in the
20 November 2016 election by regular ballot, which means he voted
21 in person.

22 MR. FRISCH: If all you want to do is to put in the
23 last page, I have no objection.

24 MR. PAULSEN: It was my mistake.

25 (End of sidebar conference.)

SIDEBAR CONFERENCE

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(Continued on the next page.)

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1 (In open court.)

2 THE COURT: Just a portion of that record that
3 you're going to introduce?

4 MR. BUFORD: Yes, your Honor. Based on our
5 discussions we would offer page nine of Government's Exhibit
6 1000.

7 THE COURT: Any objection?

8 MR. FRISCH: No.

9 THE COURT: That will be in evidence. Go ahead.

10 (Government Exhibit 1000, page 9, was received in
11 evidence.)

12 BY MR. BUFORD:

13 Q Mr. Ryan, can you tell us what we're looking at on the
14 screen?

15 A Yes. That is a portion of the voter registration record
16 that we call voter history page.

17 Q Is this a voter history page for Douglass Mackey?

18 A Yes.

19 Q Does this page reflect whether Mr. Mackey voted in the
20 elections in 2016?

21 A Yes.

22 Q It doesn't reflect for which candidate he vote, does it?

23 A Correct.

24 Q There are two rows towards beers the bottom of the
25 exhibit. Do you see those?

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1 A Yes.

2 Q Starting on the bottom row, that is April 19, 2016. What
3 information is reflected in that row going across the page?

4 A The type of election is a presidential primary,
5 abbreviated by PP; ballot type R, a regular ballot; and voter
6 type R, which means that the voter voted at a poll site on
7 election day.

8 Q What about ED and AD?

9 A The election district is the smallest subdivision in the
10 election map, and the AD is the larger subdivision in the
11 election map. It's simply the manner in which elections are
12 organized so that we can appropriately size poll sites and
13 other things.

14 Q How about the row just above that one, for the election
15 on November 8, 2016?

16 A That's election type, GE, which is general election. And
17 the ballot type R, voter type R, the same, that it's a regular
18 ballot, and voted on election day at a poll site.

19 Q Does that mean the vote was in person?

20 A Yes.

21 Q Mr. Ryan, to your knowledge from your work out at the New
22 York City Board of Elections, has the Board of Elections ever
23 been involved in discussions about the possibility of
24 electronic methods of voting?

25 A Not formerly, but informally various vendors over the

M. RYAN - DIRECT - MR. BUFORD

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1 course of time have made presentations about what their vision
2 for the future of elections might be.

3 Q None of those versions have been implemented at that
4 point at this point; is that right?

5 A No, and they never had any serious consideration.

6 MR. BUFORD: Your Honor, if I may have one moment?

7 THE COURT: Sure.

8 MR. BUFORD: No further questions.

9 THE COURT: Cross-examination?

10 MR. FRISCH: No questions.

11 THE COURT: Thank you so much. You may step down.

12 THE WITNESS: Thank you, your Honor.

13 (Whereupon, the witness was excused.)

14 THE COURT: Are you ready to call your next witness?

15 MR. BUFORD: The Government calls John Hendrickson.

16 (Witness takes the witness stand.)

17 **JOHN HENDRICKSON**, called as a witness, having been first duly
18 sworn/affirmed, was examined and testified as follows:

19 THE COURTROOM DEPUTY: State your name for the
20 record.

21 THE WITNESS: John Hendrickson.

22 (Continued on next page.)
23
24
25

J. HENDRICKSON - DIRECT - MR. BUFORD 248

1 THE COURT: Mr. Hendrickson, just a couple things
2 before you start.

3 You've got the microphone, I want to make sure
4 everyone can hear you. It's also important that you not speak
5 too quickly. The court reporter takes down everything you
6 say, and so, just try not to speak too quickly.

7 Also, don't talk over whoever is questioning you.
8 If you want to have a question repeated, or if there is
9 something you don't understand, let me know and just do your
10 best to answer only the question you're being asked, okay?

11 THE WITNESS: Okay.

12 THE COURT: Go ahead.

13 DIRECT EXAMINATION

14 BY MR. BUFORD:

15 Q Good morning, Mr. Hendrickson. Where do you work?

16 A I work for Charter Communications.

17 Q What's your position there?

18 A I'm Senior Vice President of Core and Backbone
19 Engineering and Operations.

20 Q For how long have you held that position?

21 A About eight years.

22 Q Can you give us a sense -- well, first of all, what is
23 Charter Communications?

24 A Charter Communications is a media company that provides
25 video, internet, telephone, WiFi, and mobile services. We go

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1 by our brand name which is Spectrum.

2 Q Is Spectrum a separate entity from Charter
3 Communications?

4 A No, Spectrum is simply our brand. We -- our parent
5 company is Charter Communications, but Spectrum is our
6 advertising brand for the market.

7 Q Does Charter Communications provide the services you just
8 described to residents of New York City?

9 A We do.

10 Q Can you give us a sense of your responsibilities at
11 Charter Communication?

12 A My group is a team of about 500 employees. We design,
13 engineer, operate, and maintain the internet service provider
14 network which includes metros across multiple cities in the
15 country and we connect those metro networks to the internet
16 ecosystem at large.

17 Q From your work at Charter Communications , are you
18 familiar with the internet infrastructure for the greater New
19 York City area?

20 A I am.

21 Q Is the internet infrastructure materially different today
22 than it was in 2016?

23 A From a physical standpoint, it is not.

24 Q And did Charter Communications provide internet services
25 to residential customers in Manhattan in the year 2016?

J. HENDRICKSON - DIRECT - MR. BUFORD

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1 A We did.

2 Q What kind of internet service would someone, say, living
3 in an apartment in Manhattan receive from Spectrum?

4 A It could receive our multiple different packages
5 depending on which speed tier they would sign up for. And by
6 speed tier, I mean whether it was a hundred meg package, or
7 30 meg package, just depending on whatever speed the enter
8 user would desire from services.

9 Q Could the internet service include wireless service?

10 A It did.

11 Q And how about connecting to the internet through an
12 Ethernet cable?

13 A It did.

14 Q I want to take you through a scenario.

15 If a Spectrum customer were connected to the
16 internet in their residence in 2016 and they sent an
17 electronic communication through an application, like, Google
18 or Twitter, and the servers for that application are not
19 located in Manhattan or New York State, how does the
20 communication journey from the apartment in Manhattan to the
21 servers of the application?

22 A So the internet is built and classified as aggregation.
23 So I think the best way to think about it is a small creek to
24 a river to an ocean. It's all aggregates up.

25 So a subscriber out of Manhattan would connection

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1 either via Ethernet cable, laptop, or WiFi signal to the cable
2 modem. So the cable modem is something you would purchase or
3 lease from a company like Spectrum. That cable modem from
4 whatever laptop or device within the apartment in Manhattan
5 would connect either wired or wirelessly to that cable modem.
6 From there, those signals are combined and actually sent to --
7 think of it as a pedestal or node that services multiple
8 apartments within that same complex. From there, it is
9 aggregated again. Again, from the creek to the river, to a
10 fiber optic ring that revolves around the City of Manhattan.
11 So that's where it aggregates multiple different apartment
12 buildings. So cable modem to a node, a node would service a
13 specific apartment building, multiple nodes to a core router
14 which then runs a fiber optic ring around Manhattan.

15 And from Manhattan it is going to exit in one of
16 three ways. There is a fiber optic cable, physical transport,
17 that goes through the Lincoln Tunnel, through an industrial
18 conduit through the Lincoln Tunnel, or it would go through the
19 Holland Tunnel, or it would also go through a utility that
20 crosses the 59th Street Bridge.

21 From there, it goes to one of three destinations
22 depending on what internet traffic that that person is
23 subscriber to. If it's going to a Google or Twitter, it is
24 then going to exit south to Ashburn, Virginia; or Newark,
25 New Jersey; or Chicago. Again, depending on who you're

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1 talking to, where, and what time of day you're talking to.

2 It's very traffic oriented much like your GPS system with how
3 you get around the city. Internet traffic is going to look
4 for congestion and outages and route around those. So you
5 could end up from that apartment building in either Chicago,
6 Illinois; Newark, New Jersey; or Ashburn , Virginia.

7 Q And I believe you mentioned that the fiber optic cables
8 run through the Lincoln Tunnel, the Holland Tunnel, and what
9 was the other one?

10 A The 59th Street Bridge.

11 Q Is there a way that a communication that we just
12 described sent over the Internet using Spectrum services could
13 leave the island of Manhattan without going through one of
14 those three things in 2016?

15 A Not that I'm aware of.

16 Q Just for the sake of clarity, would it matter whether the
17 Spectrum customer was using a wireless internet in their
18 apartment or connected through an Ethernet cable?

19 A It would not. Those signals are aggregated in that same
20 cable modem in their apartment.

21 MR. BUFORD: No further questions.

22 THE COURT: Sure.

23 MR. FRISCH: I have no questions.

24 THE COURT: Thank you very much. You can step down.

25 (Witness leaves the witness stand.)

J. HENDRICKSON - DIRECT - MR. BUFORD

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1 THE COURT: Call your next witness.

2 MR. PAULSEN: Yes, Your Honor. The Government calls
3 William Powers.

4 (Witness takes the witness stand.)

5 **WILLIAM POWERS**, called as a witness, having been first duly
6 sworn/affirmed, was examined and testified as follows:

7 (Witness takes the witness stand.)

8 COURTROOM DEPUTY: Please state your name for the
9 record.

10 THE WITNESS: William Powers.

11 THE COURT: All right. Good morning, Mr. Powers.

12 THE WITNESS: Good morning.

13 THE COURT: I'm over here.

14 THE WITNESS: Sorry.

15 THE COURT: So a couple things before you begin
16 testimony.

17 First, I want to make sure you don't speak too
18 quickly so our court reporter can take down everything that
19 you say and make sure you're using the microphone. If there's
20 a question that you want to have clarified or repeated, let me
21 know and just do your best to answer only the question that
22 you're being asked, okay?

23 THE WITNESS: Thank you.

24 THE COURT: Go ahead.

25 DIRECT EXAMINATION

WILLIAM POWERS - DIRECT - MR. PAULSEN

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1 BY MR. PAULSEN:

2 Q Hi, Mr. Powers.

3 A Good morning.

4 Q Where do you live?

5 A In live in Massachusetts by Cape Cod.

6 Q What do you do professionally.

7 A I am a -- I work in the technology world now but I got
8 into that world by a book I wrote. I was originally a
9 journalist.

10 Q What jobs have you had over the past number of years?

11 A So journalist, author, and then research scientist at
12 MIT. And now I'm a CEO of a tech start-up.

13 Q What was your association with MIT?

14 A I was a research scientists there for about five years
15 and I did work with a particular research group at the MIT
16 Media Lab.

17 Q What was that research project you did with the Media
18 Lab?

19 A Well, I did a bunch of research projects but I think the
20 you're concerned about was called the Electome.

21 THE COURT: The what.

22 THE WITNESS: Electome, E-l-e-c-t- o-m-e, it's a
23 word we made up.

24 THE COURT: Okay.

25 EXAMINATION BY

WILLIAM POWERS - DIRECT - MR. PAULSEN

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1 MR. PAULSEN:

2 (Continuing.)

3 Q Before we get into that, what sort of projects did the
4 MIT Media Lab work on?

5 A Our group was called the Lab for Social Machines and we
6 did research on how AI, sort of advance technologies, can help
7 society. So that's where the phrase "social machines" came
8 from.

9 Q Okay. And in the 2015-16 range, you did a project that
10 touched on the then upcoming election, is that fair?

11 A Yes, that's the one I referred to, the Electome.

12 Q Can you walk the jury through and the Court what that
13 project was?

14 A Sure. So what happened was when our research group was
15 founded around 2014, we were given a gift by Twitter of all of
16 Twitter's data going back to the very first tweet and then the
17 whole Twitter conversation every day, all the data, which was
18 an amazing gift to a research lab. And we had the idea to try
19 and do something really useful and original with that.

20 And so, 2014-2015 , we -- actually late 2014 -- we
21 realized there's another presidential election coming up in
22 over a year and maybe we could try and track the conversation
23 on Twitter around the election maybe as a new way of
24 understanding public opinion, and so, we decided to do that.

25 Q Do I understand this right. You had access to everything

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1 coming from Twitter?

2 A All the tweets back to the very first tweet since way
3 before our research group existed. Twitter was founded in
4 2006, so all the way back to the beginning and then every day
5 the full firehose of tweets as it's called. At that time, it
6 was about 500 million tweets a day.

7 Q Okay. So in the interest of the study that you wanted to
8 do what did you do with the full firehose?

9 A So what we did was we built an artificial intelligence
10 system that was very good at taking the firehose of tweets,
11 and also any old tweets that we wanted to look at from days
12 gone by, and analyzing the language in the tweets to help us
13 understand what the conversations were about. And then when
14 it isolated a particular topic for conversation, we could dig
15 deeper into those tweets and figure out what were the
16 different themes, who was talking about what. Basically, we
17 could slice and dice it in all kinds of ways with our
18 algorithms.

19 Q Who was working on this with you?

20 A Well it was really, it wound up being much of the group
21 wound up working on it. We had a group of about half a dozen,
22 sort of, faculty-researcher types including me. And then I
23 think at that time we had maybe 12 to 15 graduate students.
24 And we also, ultimately, when the project got funded by a
25 foundation, we wound up hiring a few outside people to come

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1 help us, basically, help produce the analyses that came out of
2 it.

3 Q These graduate students, they were students at MIT, the
4 Massachusetts Institute of Technology?

5 A Yes, they were MIT graduate students. And they were
6 all -- MIT is a technical university, of course, so they were
7 all to some in some fashion connected to, sort of, engineering
8 and sort of artificial intelligence science.

9 Q Okay. Was an individual named Eric Chu amongst those
10 graduate students?

11 A Eric Chu was one of the grad students, yes.

12 Q Based on your recollection, what did Eric Chu do?

13 A So on the project, actually, Eric Chu was not one of my
14 students directly but then he came to work on the project. So
15 I got to know Eric through his work on the project. And what
16 he basically did was the technical piece of our AI system, he
17 programmed it.

18 Q Okay. I think I was probably jumping too forward.

19 Could you describe for the Court, like, how exactly
20 did the project -- what was the parameters or how exactly you
21 sculpted the project?

22 A So we realized when we decided to try and track and
23 analyze the election conversation on Twitter, we needed to
24 build some kind of an AI system that, as I described, would
25 pull in all the tweets every day and make sense of it. And we

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1 decided to build a system where we would tell it the election
2 topics that meant the most to us. And so, we chose, I think,
3 18 or 20 election topics. Sort of, healthcare, taxes, various
4 typical election issues that we asked it to, every single day,
5 isolate all the tweets about those and then tell us more about
6 those tweets -- who was talking, where were those
7 conversations headed, and so forth.

8 And we also developed an interface sort of like you
9 have on your phone or your computer that would help us
10 visualize the data, basically. And then our idea was,
11 finally, the final piece of it, was our aim was to publish
12 what we discovered as sort of news stories with media outlets
13 that we hoped to partner with. And we did successfully
14 partner with some and publish quite a few articles.

15 Q So I would like to call your attention to one particular,
16 I guess, subset of this project, it was the subset in which
17 you attempted to figure out who was influencing the election.

18 Do you recall this particular subset?

19 A Yes, it was really our first ambitious project that we
20 did relatively early in that election year. It was at the
21 beginning of our work, really, maybe the third or fourth thing
22 we did. And it was a look at the influencers in the
23 conversation which voices on Twitter which accounts were
24 having the most influence in the going the most kind of
25 traction, really, with their tweets.

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1 Q Okay. Do you recall how exactly you attempted to
2 accomplish that within the project?

3 A Yes. So we had the system I described was now, to some
4 extent, up and running but, you know, it was still emerging.
5 And then we developed within that project, a particular
6 analysis that was focused on this question of which tweets
7 that were about the election were having the most influence.

8 Were getting most retweets, as they say, on Twitter
9 were spreading the most. But also, I need to add, we also
10 were pulling in a lot of news outlets in a separate piece of
11 our project, not Twitter, just news articles every day about
12 the election and we also were looking at all of that news
13 content to see who was having influence there, which
14 individuals were mentioned the most within the election
15 coverage.

16 Q Okay. So if I understand this right, the project was
17 looking to assess not just the individuals who were getting
18 the most retweets but which individuals were appearing know
19 those conversations as well?

20 A Exactly both.

21 Q What did the study determine?

22 A Well, we had lots of findings. So, you know, if you were
23 to -- nobody should do this -- but if you were to go on the
24 MIT website where the articles we published, they're still
25 there. And we had all kinds of analyses; for example, the

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1 Washington Post came to us one day and said: We'd like to
2 see how this particular violent attack on a disco in Florida
3 is affecting the election conversation because that happened
4 during the election. Could you show us what happened after
5 that terrible incident on Twitter and how people connected to
6 politics. So that's an example of an analysis.

7 I would say that this particular one about
8 influence, though, was really focused on let's develop a list
9 that shows who are the most influential voices and rank them
10 by influence. And we had ways that that was divided up, and
11 one our scientists who you mentioned, Eric Chu, was very
12 closely involved with developing the algorithms that made that
13 possible.

14 Q Okay. So if I understand this right you were involved in
15 conceptualizing the project but individuals like Eric Chu
16 actually wrote the code?

17 A Right because, as I said, I'm a journalist so I can't
18 code, I'm not technical. So Eric, in particular, on this
19 particular project, was focused on making that analysis of
20 influence work within the machine.

21 Q Did you have preconceptions of who you expected to be on
22 the list of the top influencers?

23 A I would say we didn't. We went into it, we tried to go
24 into this consciously with kind of a blank slate approach so
25 that, you know, we wouldn't be seeking a certain result. We

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1 figured that the leading candidates in the election race would
2 figure largely in the conversation and some media outlets and
3 individuals but we really didn't know what would come out of
4 it. We didn't have any preconceptions of where we would wind
5 up.

6 Q Did you find that there were certain individuals who
7 appeared in the top lists that were individuals you never
8 heard of?

9 A Lots of people we never -- lots of accounts and
10 individuals we never heard of, yes.

11 Q Was that a surprise to you?

12 A I think it was a surprise to me because I was the person,
13 I had com out of Washington journalism originally. I was a
14 Washington Post reporter and I thought that I really knew the
15 political landscape better than most people on our team and I
16 think the people on the team would agree with that. And I was
17 surprised at the number that I didn't recognize, who they were
18 on the final list.

19 Q Do I understand you correctly that that was one of the
20 interests of the project -- to find out if there were
21 individuals who were different on the usual suspects whether
22 or not driving conversation?

23 A Yes. One of the premises of the project, I should have
24 said this, was that social media is really kind of a new
25 public square in our society, and the idea that there might be

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1 new voices emerging not in the traditional ways of becoming
2 influential, which is mass media or becoming some kind of an
3 expert or being in politics yourself, perhaps social media
4 would produce new kinds of influence and we thought we would
5 find those people, and indeed, we did theorize there would
6 be some surprises.

7 Q I would like to call your attention to a specific name.

8 Was the name Ricky Vaughn on the report?

9 A It was the name of one of the accounts that made our
10 list.

11 Q Okay. Do you recall where in the list it was?

12 A And, by the way, it wasn't just Ricky Vaughn. It was
13 Ricky Vaughn 99. I think it had a number in it.

14 Q Okay?

15 A I think it was in the top 125 maybe out of the 150. I
16 can't remember precisely where.

17 Q Okay. Was this a name you knew?

18 A I felt that I recognized it from somewhere pop culture
19 and I believe we established that it was related to a movie
20 that I had never seen. But I heard the name and it seemed to
21 be -- many of the accounts were not the names of the people
22 behind the accounts. That list, you know, we had one of the
23 accounts on our list was God, tweets of God. So there were
24 all sorts of names and this was one of the ones that the
25 person behind it was a mystery to us.

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1 Q I guess more to the point the account, Ricky Vaughn 99,
2 was that an account that you were aware of before this
3 project?

4 A No.

5 Q Now, did you write up this project anywhere?

6 A We did. We wrote up a kind of a post on the Medium
7 platform where people have kind of blog-type accounts where
8 you do your own writing. So we had one for our project and we
9 did a rather long account of the influencer list on that
10 project, on that post, on that platform.

11 Q Okay. And are you the one who wrote that?

12 A I wrote that, yes.

13 Q Did that post include the full 150 individual account
14 lists?

15 A It did. It had the full list and it had an explanation
16 of what the project, the larger Electome project was about.
17 And then basics about how it worked technically. How we wound
18 up, these people, these accounts, wound up on the list and
19 some technical details as well that I had to go to the
20 technical side of the team for help in writing that part.

21 Q Okay?

22 MR. PAULSEN: Your Honor, I would to show the
23 witness what's been marked for identification as Government
24 Exhibit 1001.

25 MR. FRISCH: Your Honor, I'll have no objection to

WILLIAM POWERS - CROSS - MR. FRISCH

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1 its admission.

2 THE COURT: Okay. So that'll be in evidence. I
3 take it you want to offer it.

4 MR. PAULSEN: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. PAULSEN: I will not belabor it.

7 (Government Exhibit 1001, was received in evidence.)

8 Q Mr. Powers, do you recognize the document on your screen?

9 A Yes. That's the article I wrote that I just described.

10 Q And at the top it says "Lab of Social Machines"?

11 A Yes.

12 Q Ms. Parshad, can you skip down to where Ricky Vaughn
13 appears.

14 This is the Ricky Vaughn 99 account that you
15 mentioned before?

16 A Yes.

17 Q Okay.

18 MR. PAULSEN: No further questions. Thank you
19 Mr. Powers.

20 THE WITNESS: Thank you.

21 THE COURT: Cross-examination.

22 MR. FRISCH: Can I ask one question from here?

23 THE COURT: Yes.

24 CROSS-EXAMINATION

25 BY MR. FRISCH:

WILLIAM POWERS - CROSS - MR. FRISCH

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1 Q Mr. Powers, good morning.

2 A Hello.

3 Q On page --

4 MR. FRISCH: Ms. Parshad, can you show Mr. Powers
5 Page 10 of 14.

6 Q Do you see that?

7 A Yes.

8 Q And you see where it says "journalists and pundits"?

9 A Yes.

10 MR. FRISCH: And then if you go to the next page,
11 Ms. Parshad, if I can impose on you.

12 Q Just a point of clarification, is the list on Page 11 of
13 14 classified, pursuant to however you did your work, under
14 the category "Journalists and Pundits ," is that fair?

15 A No, I believe that this page is what it says at the
16 bottom which is "other."

17 Q Oh, I see.

18 A Yeah.

19 Q Understood. So, journalists and pundits, that applies to
20 what's above Page 10. And then on Page 11, the other applies
21 to what's above on that page including No. 107, Ricky Vaughn?

22 A Yeah. So this is a very diverse list of accounts that
23 either we couldn't figure out who the person was, what
24 category they were in, or as in the case of Ronald Reagan, you
25 know, he wasn't a politician anymore and he wasn't alive

WILLIAM POWERS - CROSS - MR. FRISCH

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1 anymore so he became other.

2 Q Fair enough. And this was published on February 23,
3 2016; is that right?

4 A I'd have see the top to verify that but it definitely was
5 some point in February, yes. February 23rd, yes.

6 MR. FRISCH: All right. Mr. Powers, thank you.
7 Nothing further, Judge.

8 THE COURT: Any redirect?

9 MR. PAULSEN: No redirect.

10 THE COURT: Thank you so much. You can step down.

11 THE WITNESS: Thank you.

12 (Witness leaves the witness stand.)

13 THE COURT: Do you want at that call next witness?

14 MR. PAULSEN: The Government calls Eric Chu.

15 (Witness takes the witness stand.)

16 **ERIC CHU**, called as a witness, having been first duly
17 sworn/affirmed, was examined and testified as follows:

18 COURTROOM DEPUTY: Please state your name for the
19 record.

20 THE WITNESS: Eric Chu.

21 THE COURT: Good morning, Mr. Chu.

22 THE WITNESS: Good morning.

23 THE COURT: I want to give a couple of instructions
24 for your testimony.

25 First of all, I want to make sure everybody hears

ERIC CHU - DIRECT - MR. PAULSEN

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1 you so make sure you're making use of -- the chair doesn't
2 move but the microphone does. That's a little trick we play.
3 As I said, it's very important that everybody hears you.

4 It's also very important that you don't speak too
5 quickly because our court reporter is taking down everything
6 you say and to just makes their job harder if you are a fast
7 talker. And also, don't talk over whoever is questioning you.
8 Same reason: It's harder for the court reporter.

9 If there's a question that you don't understand, or
10 that you want to have repeated, just let mow know and then it
11 your best to answer the question that you are being asked,
12 okay.

13 THE WITNESS: Okay.

14 THE COURT: Great.

15 DIRECT EXAMINATION

16 BY MR. PAULSEN:

17 Q Good morning, Mr. Chu.

18 A Good morning.

19 Q Where do you work now?

20 A I work at Google.

21 Q What do you do there?

22 A I am a research scientist and I work on machine learning
23 and language.

24 Q Okay. What did you do before there that?

25 A Before that I just finished my Ph.D. at MIT.

ERIC CHU - DIRECT - MR. PAULSEN

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1 Q I'd like to call attention to some -- your associations
2 with MIT earlier in your career around 2016.

3 Were you at MIT in 2016?

4 A Yes, I was.

5 Q What was your position at that point?

6 A I was a graduate student.

7 Q Okay. Are you familiar with something called the
8 Electome Project?

9 A I'm familiar, yes.

10 Q What was that?

11 A So that was a broader project that was -- the goal was
12 basically to analyze and understand news coverage and social
13 media conversation related to the 2016 election.

14 Q Did you work than project?

15 A I did, yes.

16 Q Who did you work under?

17 A My advisor professor, his name is Deb Roy.

18 Q That's D-e-b, Deb Roy?

19 A Yes.

20 Q Did you also work with an individual named William or
21 "Bill" Powers?

22 A Yes.

23 Q What sort of project did you, or what role did you play
24 on the project you described a moment ago?

25 A So there was multiple subprojects within Electome. And I

ERIC CHU - DIRECT - MR. PAULSEN

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1 worked on one with Bill Powers that was related to coming up
2 with a list of influencers in the upcoming election.

3 Q What role did you play?

4 A I wrote code, basically, to analyze, process data, and
5 then place some metrics upon them.

6 Q Do you recollect an article being written about that
7 project?

8 A Yes.

9 Q This was in medium.com?

10 A Yes.

11 Q Your Honor, can I show the witness what's been already
12 admitted into evidence as Government Exhibit 1001?

13 THE COURT: Yes.

14 Q Mr. Chu, you recall this article?

15 A I do.

16 Q Did you review of this article before coming in today?

17 A I did, yes.

18 Q Now, going back to the project.

19 You said you wrote code it do part of the analysis;
20 is that right?

21 A That's right.

22 Q Can you describe for the jury what sort of analysis you
23 did, or what factors you had to take into play, to do your
24 part of this tank?

25 A So there's three sort of phases to the project or to this

ERIC CHU - DIRECT - MR. PAULSEN

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1 project.

2 So the first phase was, basically, I didn't work on
3 this, but to give you have the background context needed. So
4 the first phase was filtering all the election
5 -related -- news articles from online and tweets to
6 election-related content. And so, other people in the lab had
7 developed some machine learning classifiers that automatically
8 took these news articles and tweets. So, phase one, we get a
9 set of content that's election related.

10 Phase two is where I started working on this. So,
11 phase two, was basically taking all the people and these
12 organizations, entities, mentioned in these tweets and
13 articles and then having some kind of broad filter so that
14 we're left with a pool of, I think, a couple tens of thousands
15 of people who might be election influencers.

16 So the way we did that we, considered -- you had to
17 have been mentioned some minimum number of times in news
18 articles and then also mentioned, at least, I think, three
19 times every month. So, basically, mentioned a fair amount and
20 consistently so it wasn't just kind of one spike.

21 Q If I can pause you there to make sure I understand.

22 So before you did the list of 150, you did an
23 initial culling of a list of 10,000 possible candidates; is
24 that right?

25 A That's right, yeah.

ERIC CHU - DIRECT - MR. PAULSEN

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1 Q Okay. Please go on.

2 A Yeah. And so, this culling that the second half of it
3 was on the Twitter side. We basically multiplied the number
4 of followers you had and also the number of, I believe, tweets
5 related to the election. And so, that was supposed to kind
6 of broadly capture that. You were talking a lot about the
7 election and you also had an audience who would consume are
8 that.

9 And so, phase three was to compute four metrics upon
10 this set of possible candidates. And so, those why the number
11 of times you were mentioned in these tweets, yes,
12 election-related tweets, the number of time you were messaged
13 in election-related articles. The number of retweets you had
14 for on the election-related tweets.

15 So the first two, basically, you were mentioned a
16 lot. The third one is you were actually reaching an audience
17 that was engaging with your content. The fourth was this
18 concept of news centrality.

19 So basically --

20 THE COURT: I'm sorry, news centrality?

21 THE WITNESS: Centrality.

22 THE COURT: Okay.

23 THE WITNESS: Centrality is this concept from report
24 graph theory. Basically, like, you have a graph which is
25 nodes connected by different edges, and the goal is find some

ERIC CHU - DIRECT - MR. PAULSEN

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1 measure of, like, which -- a centrality of a node, sort of,
2 how important or how influential it is.

3 So it's actually used in the original Google search
4 algorithm , for example, page ranking you find the most
5 central web page. So when apply it to a people graph like
6 this one then, you know, same kind of concept applies, you try
7 to find the most influential people. So maybe those are
8 people who are like a lot of shortest paths through that node
9 and things like that.

10 Q So all four of those factors played a role in making the
11 ultimate determination; is that right?

12 A That's right, yeah. So then we just took an equally
13 weighted combination of those four metrics to produce a final
14 score for each of those people and then ranked those people by
15 that score.

16 Q Okay. And so, your ranking, am I correct, in stating
17 that your ranking could have involved a very high ranking on
18 one of those four and a low at something else. It was a
19 combination of all of those?

20 A It's a combination, yeah.

21 Q So, for example, Ronald Reagan was on the list. Ronald
22 Reagan was dead at the time so he wasn't -- nobody is
23 retweeting Ronald Reagan?

24 A Right.

25 Q I presume he was mentioned a lot?

ERIC CHU - DIRECT - MR. PAULSEN

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1 A That's probably the case.

2 Q Okay. And conversely, if somebody was perhaps not as
3 well known but was getting a lot of activity, that would
4 matter as well?

5 A Probably also the case, yes.

6 Q Now, you said you weighted all four of those factors
7 equally; is that right?

8 A That's right.

9 Q The list that was spit out at the end, was that the
10 result of the code the algorithm that you created?

11 A That's right.

12 Q It was basically just what the data spat out; is that
13 fair?

14 A That's right, yeah.

15 MR. PAULSEN: No further questions.

16 MR. FRISCH: I have no questions.

17 THE COURT: All right. Thank you so much. You can
18 step down.

19 (Witness leaves the witness stand.)

20 THE COURT: You have another witness.

21 MR. PAULSEN: We do, your Honor. Government calls
22 Loren Feldman.

23 (Witness takes the witness stand.)

24 **LOREN FELDMAN**, called as a witness, having been first duly
25 sworn/affirmed, was examined and testified as follows:

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1 COURTROOM DEPUTY: State your name.

2 THE WITNESS: Loren Feldman.

3 THE COURT: Good morning, Mr. Feldman.

4 THE WITNESS: Good morning.

5 THE COURT: I ask you to do a couple of things when
6 you testify.

7 First, don't speak too quickly.

8 THE WITNESS: Okay.

9 THE COURT: Our court reporter is taking down
10 everything that you say and we don't want to make his job too
11 hard.

12 And also when lawyers are asking you questions, just
13 let them finish talking before you start talking. Same
14 reason: So you're not talking over each other.

15 If there is a question that you don't understand or
16 want to have clarified, just let me know.

17 And then just do your best to answer only the
18 question that you're being asked, okay?

19 THE WITNESS: Okay.

20 THE COURT: All right. Go ahead.

21 MR. PAULSEN: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MR. PAULSEN:

24 Q Good morning, Mr. Feldman.

25 A Good morning.

LOREN FELDMAN - DIRECT - MR. PAULSEN

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1 Q Where do you currently reside?

2 A Santa Rosa Valley, California.

3 Q What do you do professionally?

4 A I'm an internet marketer.

5 Q I'd like ask you some questions about some events from
6 back in 2016.

7 During that time , what were you doing?

8 A I was making a film. In addition to internet marketing,
9 I occasionally make films.

10 Q Okay. And it was a documentary?

11 A Yes, sir.

12 Q During the course of making that documentary, did you
13 come in contact with an individual who was known by alias
14 Ricky Vaughn ?

15 A I did.

16 Q Did you meet him in person?

17 A I did.

18 Q Prior to meeting him in person, what did you know of him?

19 A That he was an internet, you know, for lack of a better
20 term, I guess, troll. He was very popular on Twitter in the
21 political sphere. That's pretty much what I knew about him.

22 Q How did you get in touch with him?

23 A I'm not sure exactly. I believe it was originally
24 through Twitter DMs, I believe I was introduced to him via
25 either Mike Cernovich or Charles Johnson but I don't remember

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1 exactly.

2 Q Okay. Prior to coming to court today, did you have an
3 opportunity review some of your communications with the Ricky
4 Vaughn individual?

5 A I have.

6 Q Did those fairly, to your memory, reflect the
7 communications you had with him?

8 A They did.

9 Q Was he going to appear in your documentary?

10 A Yes.

11 Q Where did you meet him?

12 A I met him first at the Morgans Hotel. Prior to shooting
13 him the next day, there was a get-together at the
14 Morgans Hotel. I met him there but at the time I didn't know
15 it was him. He didn't identify himself, I just a conversation
16 with a gentleman.

17 And then the next day, when I was filming him, also
18 at the Morgans, he actually said, hey, you know, that was me
19 the night before. And, of course, I recognized him from the
20 night before.

21 Q Okay. So the first time you met him, he didn't tell you
22 who he was. The second time he said that was me?

23 A Correct.

24 Q Where did you meet him for the purposes of the
25 documentary?

LOREN FELDMAN - DIRECT - MR. PAULSEN

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1 A The Morgans Hotel.

2 Q Did you interview him that day?

3 A I did.

4 Q Did you record him that day?

5 A I did.

6 Q About how long were you with him in the Morgans Hotel?

7 A Probably an hour, maybe an hour and a half, at the most.

8 MR. PAULSEN: Your Honor, I would like to show the
9 witness what's been mark for identification as Government
10 Exhibit 711. 712, I apologize.

11 Q Mr. Feldman, do you recognize that photo?

12 A I do.

13 Q What is that?

14 A That is a photo, a still frame from my video footage, of
15 my interview with him.

16 Q Okay. I see that there's a sort of a screen in the back;
17 is that right?

18 A No, that's actually a wall. I agreed to just show his
19 shadow, to shoot his shadow, actually. So that's, I believe,
20 just a wall.

21 Q Okay. But you can see a small part of him there?

22 A Yes, sir.

23 MR. PAULSEN: Your Honor, the Government moves
24 admission of 712.

25 MR. FRISCH: I object.

LOREN FELDMAN - DIRECT - MR. PAULSEN 278

1 THE COURT: Okay. Overruled. It's in evidence.

2 (Government Exhibit 712, was received in evidence.)

3 MR. PAULSEN: May we publish to the jury, your
4 Honor?

5 THE COURT: Yes.

6 (Exhibit published.)

7 Q Mr. Feldman, so that silhouette and the part of the face
8 is of the individual you knew to be Ricky Vaughn; is that
9 fair?

10 A It is.

11 Q After your recording session, did you continue to see
12 him?

13 A I saw him either, I don't recall if it was that same
14 night or the next night, but we had dinner.

15 Q Okay. But you obviously were interacting with him in
16 person throughout?

17 A Yes.

18 Q Do you recognize the person you met that day in court
19 today?

20 A Yes.

21 MR. FRISCH: I stipulate to the identification,
22 Judge.

23 THE COURT: I'm sorry.

24 MR. FRISCH: I stipulate to the identification.

25 THE COURT: Indicating the defendant.

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1 Q Now, that day, did you know his real name?

2 A No.

3 Q Did you learn anything about him that day?

4 A At dinner is when we spoke a little bit about, you know,
5 more personal stuff.

6 Q Okay. Did you learn any just biographical facts about
7 him?

8 A I recall that he said that he was working finance, was a
9 finance analyst of some type. I believe he said that he
10 originally came from the New England area perhaps Connecticut,
11 I think.

12 Q Now, Mr. Feldman, I'd like to jump forward a couple
13 years?

14 A Okay.

15 Q Do you recall being contacted by a journalist named Luke
16 O'Brian?

17 A I do.

18 Q Did he send you something that he wanted you to identify?

19 A He sent me a few pictures.

20 Q Okay. Did you recognize those photos?

21 A I did.

22 Q Who were the photos of?

23 A Ricky Vaughn.

24 Q So you didn't know the name of the person?

25 A No, he just sent me pictures and said: Do you know this

LOREN FELDMAN - DIRECT - MR. PAULSEN

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1 person? He didn't attach a name or anything.

2 Q And you told him that was the person you had met that
3 day?

4 A Correct.

5 MR. PAULSEN: No further questions, your Honor.

6 MR. FRISCH: I have no questions.

7 THE COURT: Thank you so much you can step down.

8 (Witness takes the witness stand.)

9 THE COURT: Are you ready to call your next witness?

10 MR. PAULSEN: Your Honor, those were our five
11 witnesses for the morning.

12 THE COURT: Okay. So we have a few matters to
13 discuss that will, I think speed, us along here.

14 And so, what I'm going to do is give you an extended
15 lunch. Let me just confer with the parties scheduling I wise
16 over at the side.

17 (Continued on the next page.)

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SIDEBAR CONFERENCE

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1 (Sidebar conference.)

2 THE COURT: So, 1:00 o'clock I have this other
3 matter. But does it make sense right now to discuss these,
4 the questions, whatever is still outstanding, or could you
5 work together a little more before you come to me?

6 MR. PAULSEN: We can reconvene but I think it would
7 actually be most efficient now, to the extent that your Honor
8 wants further modifications, we could use the lunch break to
9 fix them.

10 THE COURT: That's fine. All right. That's what
11 we'll do then.

12 (Sidebar discussion concludes.)

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1 (In open court.)

2 THE COURT: Okay, everybody. So in addition to
3 lunch, I want to talk with the parties. I have a couple of
4 questions that I want to handle.

5 So I think the best thing to do would be to come
6 back at 2:30 and then we'll be ready to go with the next
7 witness.

8 During the lunch hour, obviously, those same rules
9 apply. Don't talk about the case. Don't talk to anybody else
10 or let anybody approach you have about the case. Don't look
11 anything up on the internet. If someone were to approach you
12 to try toll talk to you, you must report to it Ms. Greene and
13 to me. But I do hope you have a nice lunch, I think it's nice
14 outside. So we'll see you back at 2:30, all right?

15 COURTROOM DEPUTY: All rise.

16 (Jury exits courtroom.)

17 (Continued on the next page.)

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1 THE COURT: All right. Everybody can sit down. I
2 think the best thing to do, the subject this letter from
3 Sunday. I think that is what we had left to discuss. There
4 was another issue raised yesterday about, about the
5 cooperating witness, but I don't think we had anything, I
6 think Judge Garaufis already decided that. So I don't plan to
7 revisit that, unless there's something I missed. But I think,
8 let me just try to get this in the most organized way. I did
9 look through all of the exhibits last night and we flagged the
10 ones that I think are the subject of some dispute, but bear
11 with me if I have to look through some of them.

12 All right. So just before we do that. One of our
13 alternates, it's Juror Number 16, told Ms. Greene that he is
14 familiar with the lab at MIT. He's never worked on this
15 issue, he doesn't know any of the people. He said it wouldn't
16 sway him in any way, but that's what he told Ms. Greene. Does
17 anybody feel that -- they have gone for lunch, but does
18 anybody feel the need to question him?

19 MR. PAULSEN: Not the Government, your Honor.

20 MR. FRISCH: No.

21 THE COURT: Okay. Just wanted to bring it to your
22 attention. Thank you, Donna.

23 So I think the best thing to do is just go through
24 these things. Is there anything on this letter we don't have
25 to address? They're all labeled with the GX number.

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1 MR. PAULSEN: That's right. Your Honor. If I can
2 explain the mechanics. We provided to Judge Garaufis a much
3 larger set the documents that included all of the portions
4 that the Government was agreeing to get rid of or we had
5 mutually decided not to offer that was shaded in red.
6 Everything that's here that's on this list was something that
7 was presented to Judge Garaufis as something that was going to
8 be offered by the Government.

9 THE COURT: Okay. I just wondered if you trimmed
10 that down at all.

11 MR. PAULSEN: We did trim it a little bit more.
12 There were certain words, for example, the word cuck appears a
13 lot. We wanted to get rid of that.

14 THE COURT: I can make this even easier. I hold in
15 my hand a letter. Is there anything on the letter that I
16 don't have to read out and ask you about?

17 MR. PAULSEN: No, your Honor.

18 THE COURT: Okay. I know you've worked together to
19 try to resolve disagreements, and I appreciate it. I think
20 that's the way things should work, but there's a lot of
21 material so obviously there are going to be some differences.

22 So let's begin with, on Mr. Frisch's letter, the
23 first request has to do with GX207. And Mr. Frisch is -- this
24 is a -- I'm sorry. Is this a tweet that we're talking about?

25 MR. PAULSEN: Your Honor, this is -- at the top it

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1 says group message ID. If it says that, this means it was a
2 group chat. There were lots of members of it. Under each, I
3 guess, sentence, there's a list of who sent it and the time.

4 THE COURT: Right. And I can tell that Mr. Mackey
5 are the ones that are in blue.

6 MR. PAULSEN: Yes, your Honor.

7 THE COURT: I got that. I just wanted to make sure
8 I was calling it the right thing.

9 MR. PAULSEN: And your Honor, conversely. If it's
10 a direct message, so there's only two people, you'll see two
11 numbers with a dash in between it, and those are the two
12 numbers.

13 THE COURT: I'll do my best to remember. So this is
14 something, it's 207. And the request is that -- 200-7. And
15 the request is that the word terrorism be replaced with
16 warfare or some other less charged words and that, I'm not
17 going to try to pronounce this. It's LOLDONGS be omitted.
18 And what's the Government's response to that? I want to make
19 sure I have this right.

20 MR. PAULSEN: Yes, your Honor. We have, in many
21 cases, we've just deleted portions of messages, things that we
22 thought were overly inflammatory. In this case, the person
23 that he is talking to, the defendant is talking to, saying
24 they should create a fucking manual for psychological LOLDONGS
25 terrorism --

1 THE COURT: Can you hold on for just a second?
2 What's confusing is just the numbering and the exhibits. What
3 letter is that under?

4 MR. PAULSEN: So, your Honor, I can give you those.
5 Your Honor, if you don't see a letter that's because there's
6 two different versions of it. The materials are the same.

7 THE COURT: Okay. All right. The confusing thing
8 is you have given me a document that says 2007 and that's got
9 a 6 next to it. This is not due to my low information
10 position on all things internet, but this is just because I
11 think you're gaslighting me.

12 Anyway, so this is this exchange in which someone
13 says to hand people a colorful word manual for psychological
14 whatever that word is, LOLDONGS terrorism. And Mr. Mackey
15 replies, yes we've, I think that would be good. And what
16 counsel is asking is that you change what the person said to
17 warfare and leave out that other word. Thoughts?

18 MR. PAULSEN: Your Honor, the Government's
19 inclination is we are willing to redact things that we think
20 are particularly inflammatory, but we have been trying not to
21 change the actual language of the conversations that the
22 defendant was involved in. This language, warfare versus
23 terrorism, removing this LOLDONGS which is an internet
24 euphemism.

25 THE COURT: Do I want to know what it means?

1 MR. PAULSEN: LOL is laugh out loud. Dongs is
2 penis.

3 THE COURT: Oh, nice. So now we know what it
4 means. So I'm not a believer in changing what somebody
5 actually said. Are you going to --

6 MR. PAULSEN: No, your Honor, we have changed many
7 things --

8 THE COURT: You don't want to redact it or change
9 it, correct?

10 MR. PAULSEN: Yes, your Honor.

11 THE COURT: What's your position on this?

12 MR. FRISCH: This comes ten months before, I guess
13 nine months before --

14 THE COURT: Into the microphone.

15 MR. FRISCH: This comes 8 or 9 months before the
16 charged conspiracy. It's to the extent the Government wants
17 to use it because there was this purported strategy. It's not
18 a crime, there's nothing illegal here, and if the Government
19 wants to use this for whatever reason, it strikes me that
20 these inflammatory words shouldn't be apart of it. The whole
21 thing shouldn't come in.

22 THE COURT: Well, I mean, it does come before the,
23 before the conspiracy period. But I think it's at least
24 somewhat probative as to the formation of the conspiracy or
25 the means and methods. And I don't think the language is

1 unduly prejudicial considering what else is in there. So I'm
2 going to, you have an exception. I'm going to leave that as
3 is. You have an exception to that ruling.

4 The next one is 210, sorry. GX200-10. And he
5 objects -- I'm sorry, Mr. Frisch objects to the phrase
6 somebody says someone else says, you think people will care
7 about these kind of connections of people as the undecided
8 voters. And Mr. Mackey replies yes, repetition is key.
9 Crooked Hillary Clinton created ISIS with Obama, that's in
10 quotes, repeated again and again. And you've just said that
11 you object to it. I'm not sure why.

12 MR. FRISCH: Why do I object to this?

13 THE COURT: It doesn't say in your letter. It says
14 that you object.

15 MR. FRISCH: Well, this is in the context of other
16 letters that I wrote to Judge Garaufis that I incorporated,
17 but I understand. So I made the point in the prior letters
18 that there's a lot of speech within these chats, which is not
19 illegal. And some of it is cumulative of others, some is
20 inflammatory, and I believe when the Government can make its
21 point with something that doesn't fall on the wrong side of
22 403, they should use the other thing rather than the
23 inflammatory thing. The probative value, this is the
24 repetition part which, by the way, existed in other chats.
25 The quoted phrase is just, it's, it's Constitutional protected

1 speech, it's irrelevant what he's saying needs to be repeated,
2 it's political and it's inflammatory.

3 THE COURT: I didn't hear the last part.

4 MR. FRISCH: It's inflammatory.

5 THE COURT: What's your response?

6 MR. PAULSEN: Your Honor, this is the defendant's --
7 this goes to the methods by which these statements which
8 continue from these early times through the conspiracy period
9 of repeating things involving their political opponents and
10 trying to make sure its said over again. The fact that the
11 defendant didn't like Hillary Clinton and was supporting
12 Donald Trump is an omnibus fact in this case. I don't think
13 this is inflammatory in the context of that.

14 THE COURT: I don't think it's especially
15 inflammatory, but is it cumulative? Do you have other? I mean,
16 there's also the concept of gilding the lily. Do you have
17 other things that say the same thing?

18 MR. PAULSEN: Your Honor, there are many things in
19 this direction. My understanding is that the defendant's
20 argument in part is that he was not acting in concert of these
21 individuals when he sent out the memes. And I think what's
22 fair is that we're introducing that there was this long
23 pattern and practice of him acting in a certain way, and it's
24 frankly not credible and he wasn't when he acted regarding the
25 voter disinformation.

1 THE COURT: So first of all, I don't think that just
2 because something is protected speech means it should be
3 excluded because I don't think that's a reason to exclude
4 evidence. I assume most speech is protected in trials, but I
5 do take the point that it's Mr. Mackey instructing these other
6 people about how to get what's legally protected speech out
7 into the out into the public. And I don't think there's
8 anything unduly prejudicial about it. I mean, this was --
9 what do you think is prejudicial about it? That -- he thought
10 that Hillary Clinton created ISIS with President Obama or is
11 it just --

12 MR. FRISCH: So two things. Number one; we briefed
13 for Judge Garaufis that there's case law that where -- the
14 fact that speech may be constitutionally protected does not
15 barr the Government from using it to prove a criminal case.

16 THE COURT: Right.

17 MR. FRISCH: However, it doesn't mean that it
18 automatically comes in and should be subject under proper
19 scrutiny under Rule 403.

20 THE COURT: I heard that.

21 MR. FRISCH: Which includes that if the Government
22 can prove something without speechbarh that is provocative and
23 is someone's right to say, the Government should do it. It
24 seems to me that any reference to ISIS, any reference to this
25 motion that Ms. Clinton referred to as crooked created ISIS

1 with Obama, it just strikes me as something which is going to
2 strike the jurors the wrong way.

3 I might add, this is not an isolation. We saw a
4 silhouette of Mr. Mackey in an interview from six months
5 before the conspiracy and I think the aggregate of all of
6 those things makes it very difficult for him to get a fair
7 trial.

8 THE COURT: Well, I don't know how a silhouette
9 makes it hard for him to get a fair trial. But you still
10 haven't said what you think is prejudicial. Is this calling
11 Hillary Clinton crooked and saying she's created ISIS with
12 President Obama.

13 MR. FRISCH: It's a quoted phrase. If the
14 Government wishes to use the rest of it to draw its inference
15 of conspiracy or repetition, I'm not objecting to that. I'm
16 simply objecting to the quoted phrase.

17 THE COURT: Okay. The objection is overruled except
18 that I want to caution the Government that about the concern
19 that I have about things being cumulative and I'm at a little
20 bit of a disadvantage here because I don't know what other
21 things are coming in. So it could be that I tell you you
22 can't introduce anymore of these similar things. But I do not
23 find this particular phrase is unduly prejudicial. It's
24 certainly not more inflammatory than the charged conduct.
25 It's probably statements and sentiments that A; people have a

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1 right to say. And that were, I believe, probably were said
2 during the campaign. It also is relevant because it goes,
3 again, to the formation of the conspiracy and to the means
4 and methods.

5 The next think is we'll, there are two things. 71,
6 72, 73, and 74, which I think are pictures and references to
7 former President Trump. And I think one of them is a
8 photograph of or photoshop of Trump with some reference to
9 Clinton defeats Trump. I guess that's, in the defense's view,
10 that's a reference to Dewey defeats Truman. And then there
11 are a couple of other photographs. I'm just curious why it's
12 relevant. I don't think it's particularly prejudicial, but I
13 wonder why it's relevant.

14 MR. PAULSEN: Yes, your Honor. So this is during
15 the conspiracy time period. It shows the defendant --

16 THE COURT: Can you speak into the microphone?

17 MR. PAULSEN: Sure. It shows the defendant working
18 with others and suggesting the creation of sort of political
19 memes, which is part of the conduct at question here. We
20 expect that part of what the defendant is going to raise,
21 which he already raised in opening, is that the defendant was
22 somewhat aloof from these at this time.

23 THE COURT: Aloof from?

24 MR. PAULSEN: Aloof from this type of conduct and
25 this is a little bit, it's about a month before the election

1 and four days before the election in which he is asking some
2 of his, the people on Twitter to create political memes of a
3 certain type and he's like soliciting the work.

4 THE COURT: But what does that have to do with the
5 conspiracy?

6 MR. PAULSEN: Well, it shows the operations and
7 methods of these group that essentially aggregated together to
8 create memes and propagate them in a coordinated way.

9 THE COURT: All right. My question for you,
10 Mr. Frisch is I don't understand what's really prejudicial
11 about it.

12 MR. FRISCH: Well, there's -- first of all there's,
13 71 and 72, the objection is different from 73 and 74. That's
14 first of all.

15 With regard to 71, the point of it is that the point
16 of it is the image memes, that is the proffered probative
17 value of this exhibit. I don't know why -- I'm sorry, that's
18 71. I don't know why 72, that's not a meme, that's an actual
19 picture. I don't know why that should come in. I don't know
20 why, apart from my other concern about current events this
21 week. It's irrelevant. We live in a politically polarized
22 time and some people have different opinions of different
23 candidates. I don't see why that has to come in.

24 THE COURT: I don't think it's a secret. Everybody
25 opened on who was supporting who. So I don't think the fact

1 -- I mean, he was the president, so a lot of people voted for
2 him. So I don't think that just the fact that there's a quote
3 and a picture of the former president with his quote, I don't
4 really see what's inflammatory about that.

5 MR. FRISCH: Well, you know, the Government's --
6 the theory of the Government's case is that the two memes at
7 issue are important because they're visual as opposed to
8 words. That's what makes them so, of such great concern.
9 It's not that Mr. Trump's name is part of this case and is
10 part of these tweets, it's the visual of it. At a time when
11 there may be current events. And again, it's not just this
12 one thing. It's part of a, contributing to an aggregate.

13 MR. PAULSEN: Your Honor, there have been a number
14 of occasions where there were photos of former President Trump
15 or candidate Clinton that we removed because they didn't, they
16 weren't necessary for the context of understanding what the
17 two parties were talking about. What I've told Mr. Frisch is
18 that we were inclined to leave in things when it would just be
19 hard for the jury to understand what exactly they were doing.
20 So if the defendant created a meme that had President Trump in
21 it or former candidate Clinton in it, we would leave it alone
22 or, in this case, where he solicited a meme that had the
23 president in it, we left it alone. We did omit lots of extra
24 pictures that were contextual that we didn't think were
25 strictly necessary. But in this case, you've noticed, I'm

1 sure your Honor, that there's redaction boxes in lots of
2 places. At some point it gets hard to read.

3 THE COURT: Well, I just want to make sure we're
4 talking about, there's another picture which I really don't
5 think is necessary. Maybe this is the same one. The picture
6 of, its the former president standing on the neck of Hillary
7 Clinton. Are you still offering that?

8 MR. PAULSEN: Well --

9 THE COURT: Maybe I'm confused. Anyway, the other
10 thing that I was going to say about this. To the extent that
11 anything is inflammatory, and I don't think these are
12 inflammatory, they, a jury charge on inflammatory statements
13 or pictures or about political views, there is an instruction
14 that can be given to the extent that there is you've heard
15 testimony and seen exhibits related to what might be the
16 defendant's political views that you should treat the evidence
17 with caution. That it's not a reason to find the defendant
18 guilty of the offense charged in the indictment. But that the
19 jury can consider it for limited purposes. Including the
20 context in which the statements were made, what the defendant
21 intended in making this statement, and his expectations
22 regarding the effects of the statement. But the charge would
23 also include that the jury cannot find the defendant guilty
24 because they disagree with his political views. I think
25 that's probably an appropriate instruction anyway in the

1 context of this case. But I think that will cure the concern
2 that you have about the extent to which people have political
3 disagreements.

4 I didn't participate in jury select, you all did. I
5 assume this was a topic that was discussed quite extensively
6 with the members of the jury to make sure that people who just
7 felt they couldn't be fair either for one side or the other
8 because of their own political views were questioned and, if
9 appropriate, excused.

10 MR. PAULSEN: That's right, your Honor.

11 THE COURT: So I think that just to put all of this
12 in context, I think a curative instruction is something that
13 can go along with this. And I also will say just
14 provisionally, because it is somewhat difficult for me to see
15 how this is going to come in. If the same thing keeps coming
16 in, I'll tell you not to keep putting in the same thing. But
17 standing on its own, these things, I think, are relevant and
18 they do not, I don't think, that they're unduly prejudicial.

19 Then the next thing are two chats that are
20 government Exhibit 200-80 and 430-2 .

21 MR. FRISCH: Your Honor skipped over 200-73 and 74.

22 THE COURT: Oh, did I? All right. Well, those are
23 -- I did those together. I thought those were more --

24 MR. FRISCH: These are different?

25 THE COURT: What.

1 MR. FRISCH: These are different.

2 THE COURT: The reason I keep telling you to speak
3 up is I can't hear you and we have an overflow room and I
4 think just prior experience, the people don't use their
5 microphones and we hear about that. Although that may not be
6 the issue here.

7 MR. FRISCH: Here's the objection on 73 and 74.
8 It's November of 2016, November 4th, it's after the media
9 coverage, by the way, of the memes . After they're shared to
10 be sure. And it's talking about undisclosed memes of some
11 sort and we went into --

12 THE COURT: I see.

13 MR. FRISCH: Got it? And we went into the
14 Government's discovery and it is, we believe, a meme of the
15 former president holding up a newspaper that says Clinton
16 defeats Trump, which I can mark as an exhibit so the Court can
17 see it. And I think that, in this context, given that the
18 memes of issue have already been shared, it's already been
19 covered by BuzzFeed and other media outlets. This is
20 confusing and misleading because this is an election in
21 advance of Election Day and it's a Thomas Dewey photo of the
22 former president holding up a newspaper. I'm not sure what
23 the relevance of that is. The fact that after this, there is
24 some discussion about a meme along these lines.

25 MR. PAULSEN: Your Honor, this is actually one

1 issue where our discussions are still open. My understanding
2 is the 3 links listed in these two documents are dead, and we
3 were not able to recover the actual photo. Where we left it
4 with Mr. Frisch is he believes he has figured out what the
5 underlying document is. We don't wish to mischaracterize
6 anything. We just, we're not of the understanding that there
7 was proof of what it was.

8 THE COURT: I'm pretty sure that everybody knows
9 that Clinton did not defeat Trump. I guess I take the
10 reference that I don't know how many students of history there
11 are on the jury. But in terms of the Dewey Truman election, I
12 don't think that's prejudicial. It sounds to me like you're
13 not going to put it in.

14 MR. PAULSEN: We weren't going to put it that photo,
15 but --

16 THE COURT: All right, good. Then you agree.

17 MR. PAULSEN: Yes.

18 THE COURT: He's not putting in the photo.

19 MR. FRISCH: That's not the point. The point is is
20 that these two sets of chats give the impression that this is
21 more deceptive image stuff and it's not. And it doesn't
22 clarify, it just says here's two more memes that you can mock
23 up. And if I'm a juror, I'm thinking jeez, they're still up
24 to this stuff, and it has nothing to do with it.

25 MR. PAULSEN: Your Honor, if we are -- if these

1 links are recoverable and they indicate what he says, we will
2 gladly give the proper context. I just have not seen this
3 proof and we need to talk more on this.

4 THE COURT: I'm inclined to keep them out because
5 they don't seem particularly relevant.

6 MR. PAULSEN: Understood, your Honor.

7 THE COURT: But if you can give me a better reason,
8 I'm going to keep those out.

9 The next one is 280, 432. These are, in my view,
10 too long before the charge conduct to be relevant. It's about
11 a year earlier. So those are not going to come in.

12 The next one is 113. This is something from April,
13 I think. And it's a tweet that relates to low information
14 voters generally. What's the relevance.

15 MR. PAULSEN: Your Honor, part of the Government's
16 presentation is that evidence indicates that the defendant
17 thought that some of his political opponents frankly were just
18 gullible, not intelligent.

19 THE COURT: I don't think -- first of all, I don't
20 think it's that prejudicial, but I don't think that's what
21 this says. If it's the one I'm thinking of.

22 MR. PAULSEN: I think it is that one, your Honor.
23 The defendant opened on the idea that the memes themselves
24 clearly couldn't have distracted somebody because they were
25 lacking various types of indicia of reality that didn't state

1 what state it was from, it didn't state the time. The
2 defendant stated that --

3 THE COURT: Well, there's more later about that
4 that's directly relevant to the actual charge conduct. I
5 thought there was more of that. It doesn't say low
6 information voters but, hold on.

7 MR. FRISCH: It looks like the author of this
8 letter did not properly cite the exhibit. So the author is
9 looking for the precise cite now.

10 MR. PAULSEN: Which one are you looking for?

11 MR. FRISCH: The one that is listed as GX113. I
12 forgot the prefix.

13 MR. PAULSEN: It's 200.

14 MR. FRISCH: It's 200, thank you.

15 MR. PAULSEN: It's 200-113.

16 THE COURT: Oh, that's right. We actually did find
17 it yesterday. Okay. And this one, okay. I was looking at
18 the wrong thing. This one reads, it's a fools errand to
19 babble on complaining about low information voters. Either
20 stay out of mass politics or play the game. But it is correct
21 that it's from April of 2016. So I'll tell you I think it's a
22 fair point of the concept of low information voters is raised
23 and I apologize for not referring back to whatever letter you
24 wrote to Judge Garaufis. But the, I think it's relevant in
25 context of some of the other things that come afterwards.

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1 Your objection is that it's duly misleading and prejudicial.

2 MR. FRISCH: Because it refers to low information,
3 it refers to low information voters of all types. It's a
4 discussion of, you know, something that's discussed in these
5 campaigns and has nothing do with ultimately what the
6 Government describes as deceptive images 6, 8 months later.

7 THE COURT: Well, you did open on the fact that
8 nobody would really be fooled by this. And so I think that
9 it's relevant in that context that this idea of low
10 information voters was out there. I also don't think it's
11 prejudicial so your application is denied on that one and you
12 have an exception.

13 The next ones are 405 and 406. This is the one I
14 was talking about before. This is the, the first one is
15 Mr. Mackey has a picture of, I guess it's supposed to be
16 Donald Trump with a green face holding some guns on the U.S.
17 border. What's the point of that? Isn't this a racist meme,
18 the frog with the --

19 MR. PAULSEN: It's the Pepe the frog meme. It's
20 used in a variety of contexts.

21 THE COURT: Okay. But what's the point?

22 MR. PAULSEN: Your Honor, if you look at the
23 previous page, this is the onset of the war room, which is
24 probably the main group in which they discussed the
25 propagation of certain types of materials. They are talking

1 about the use of memes on Twitter, and the defendant weighs in
2 and says, the best way to manipulate the anti-Trump hashtag
3 is to spin them into a positive. Rather than wining or
4 complaining, here are some examples, and he gives two examples
5 of it. This is an example, your Honor, as I mentioned before
6 where we have sanitized things where you can still get the
7 context of what he did. But in this case this is what the
8 defendant shared with them.

9 THE COURT: I know, but I don't think it's relevant.
10 I'm not permitting this. The second one is, you know, it
11 looks like he's in shining armor and stepping on the, oh.
12 Stabbing the former Secretary of State. So you have an
13 exception to my ruling. I'm not permitting that.

14 MR. PAULSEN: So, your Honor, just to be clear --

15 THE COURT: Are you going to argue with me about my
16 decision?

17 MR. PAULSEN: No, no, no. I just want to make sure
18 I know what we should do. So we should redact out the photo,
19 but the fact that is he sharing something is acceptable.

20 THE COURT: Yes, that's fine. I don't think
21 counsel has any objection to that.

22 All right, the next one is the memes about drafting
23 daughters. I think Judge Garaufis in one of those orders
24 expressed a concern about going overboard with that.

25 MR. PAULSEN: Yes, your Honor.

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1 THE COURT: And I think that's a fair point. And I
2 don't think any of these are or, at least some of them, were
3 not posted by Mr. Mackey.

4 MR. PAULSEN: Yes, your Honor.

5 THE COURT: So I think this is one of those that
6 you're going to have to pick and choose, and maybe not every
7 single one, and I'm sure you're going to say you've already
8 taken a bunch of them out. But are there others besides this?
9 That's what I wasn't sure about.

10 MR. PAULSEN: Your Honor, this is a smaller subset
11 of the original, much larger subset. The reason that some of
12 these were chosen is that they are -- these are sent also by
13 the other individuals in the war room who were also pushing
14 the vote by text memes as well. The cooperator, an individual
15 NIA for Trump, an individual --

16 THE COURT: I didn't hear what had you said.

17 MR. PAULSEN: It shows the defendant days before the
18 vote by text operating in coordination with those same people
19 on a different kind of Twitter hashtag tactic. We heard in
20 the, in the opening as well that the defendant suggested that
21 it was a problem for the Government that the specific memes
22 that the defendant grabbed were not the precise ones that were
23 in the group. This is, again, evidence of how they operate
24 where they shared ideas and then they grab memes that are very
25 similar and send them all out. We think this is important

1 evidence showing literally days before he does the charged
2 conduct with them operating with the same coconspirators in
3 the same exact way.

4 THE COURT: Well, I mean, there are -- let me just
5 look to see. I think there are, 1, 2, 3 -- are there -- no.
6 Five of them? Those are the ones that you're objecting to,
7 right, Mr. Frisch?

8 MR. FRISCH: Yes. My hope was that I could help the
9 Government cull them out by highlighting them that seem too
10 far afield or the most problematic. I think it's problematic
11 that there are little kids in these, the black lives matter
12 one seems to be problematic. There are others to which they
13 can make this point. They can't nail every, they might not be
14 able to hammer every nail in the coffin that they might like,
15 but there's plenty here without, you know, gilding the lily as
16 your Honor said

17 THE COURT: Don't quote me.

18 MR. PAULSEN: Your Honor, the variety here was just
19 precisely because of the involvement of many other individuals
20 in that room at the time. So we would obviously click through
21 these very quickly, if that would help your Honor.

22 THE COURT: No, that's not a thing. It's still in
23 evidence so going fast doesn't help. Let me just look at
24 these again. And your position is someone else sent them,
25 draft our daughters.

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1 MR. PAULSEN: So, your Honor, the 4011 is him
2 retweeting the cooperating witness.

3 THE COURT: Well that's his, so that --

4 MR. FRISCH: I'm not objecting o that one.

5 THE COURT: Oh, you know, I misread what your
6 objection -- because it says 401. Okay, so it's just four of
7 them that you're objecting to.

8 MR. PAULSEN: 7 and 8.

9 THE COURT: 7 and 8.

10 MR. PAULSEN: 7 is, this is from one of the other
11 members of the war room who sent the vote by text memes to the
12 war room. And she is retweeting the cooperator.

13 THE COURT: I don't think either one of them is
14 especially prejudicial. I think there are, they also copy
15 what, they appear to look like they are from the Clinton
16 campaign. And at least, maybe I'm missing something here, but
17 at least with respect to the goal of the conspiracy which if
18 I'm correct it's to keep certain groups of people from voting,
19 including African Americans and women, and these seem to be
20 designed to look like they came from the Clinton campaign and
21 they, the ones that you're concerned about, also appear to be
22 aimed at targeting those two groups of people.

23 I also just take the point that you've got to, in
24 terms of establishing who is in the conspiracy, they have to
25 show the usernames involved and the links in the conspiracy.

1 So I mean, I think that's relevant. I don't think they're
2 unduly prejudicial either. There's nothing -- it 's not
3 racist and it's not sexist. I think it's an effort which I
4 don't think anybody is saying it's illegal to make it look
5 like the Clinton campaign was supporting and I think that's
6 one of the themes in the case. So I don't see why that is
7 unduly prejudicial. I take the point about things being
8 cumulative. But I think it's relevant, at least to establish
9 who is, which people are exchanging these. So I'm going to be
10 alert to the cumulative aspect of it, but I'm not precluding
11 it on this basis, so you have an exception to this ruling.

12 The next thing is 420-8. Is this the one that has
13 mad man number one on the top.

14 MR. PAULSEN: Yes, your Honor.

15 THE COURT: I don't really want to read this into
16 the record, it's a little juvenile. But it says please
17 retweet. I want these guys to poop in their pants a little
18 bit. And is that in the connection with something else? Is
19 that, the page before, is that a continuation of the page
20 before?

21 MR. PAULSEN: No, your Honor. It's just more of
22 the, they use these war rooms as like they would flag an issue
23 and say we want everybody to do this thing.

24 THE COURT: This is from April 2016 so this one is
25 out. Also in the context of this, I do realize the Government

1 has, in response to some of the defense's concerns and of
2 their own volition has taken steps to exclude them. There are
3 huge numbers of communications here. So I just didn't want
4 that to be in a vacuum.

5 420-18. So this is the one from April 21st. It
6 says, virtual campaign. Who is the next target stump? We
7 need new rumors. Got to go for someone with dumb fans though.
8 This is trying to make the celebrities look like Trump
9 supporters.

10 MR. PAULSEN: Yes, your Honor.

11 THE COURT: I think this goes to the question of
12 whether they actually thought people would fall for it. I
13 mean, I think that was one of the themes and since you opened,
14 again, on nobody would fall for it, I think it's appropriate
15 for that --

16 MR. FRISCH: Well, except for a couple of things.
17 First of all, this is, I suppose the Government's view is
18 everyone who participates or most everyone that participates
19 in these various chats is a coconspirator, even Though this
20 happens in April 2016, or it's background and context, or it
21 shows the formation of the conspiracy. You know, the object
22 is to get this in evidence somehow. This particular one, Mr.
23 Mackey is not there, this is not about the memes at issue. If
24 this has probative value, it's hanging by a thread. And it
25 seems to me it just shouldn't come in.

1 MR. PAULSEN: Your Honor, he's there in the sense
2 that he's a member of this room. He's not saying something at
3 that moment, if that's the distinction. I think what your
4 Honor said is correct, there is a large number of statements
5 that express animus that we are not putting in. But the
6 things that we asked Judge Garaufis to put in were things in
7 which he made statements about the intelligence or gullibility
8 or the ability to be tricked of various groups, or issues
9 where he talked about whether a group should be voting. And
10 those two things, whether women should vote, whether black
11 people are gullible, anything of that sort, we asked for those
12 to go in. It goes to the heart of where we thought our burden
13 of proof is in terms of intent. He opened on that precise
14 point.

15 We would ask for latitude here where these groups
16 that are refining their memes, how to do this, are discussing
17 that we need to target groups that are dumb, is precisely on
18 the nose of what they were doing.

19 MR. FRISCH: I think Mr. Paulsen just established
20 why this shouldn't come in. He has others that are far more,
21 at least many in my view, probative, like the one about
22 gullibility with the people purported by these means. I don't
23 know who Real Rocky Gold is. The fact that this person is a
24 member of this group, as Mr. Paulsen says, if this is a
25 conspiracy, this person is on the far remote part of it, and

1 is expressing a point of view that Mr. Mackey is not
2 apparently aware of and has nothing to do with this case.

3 THE COURT: I think it's relevant to the goal, which
4 is alleged by the Government, which is to hope that they'll
5 reach a group of people that are either gullible or naive, or
6 in this person's words, dumb. I think it's relevant for that.
7 I don't think it's unduly prejudicial either.

8 Next is 430, is it eight through 13 that you're
9 objecting to?

10 MR. FRISCH: Yes, that's right.

11 MR. PAULSEN: Your Honor, if I may. We can concede
12 to remove these. We tried to redact them.

13 THE COURT: Perfect.

14 MR. PAULSEN: They are difficult to redact.

15 THE COURT: They are out.

16 430-22, it's the defendant saying: This image is
17 brilliant. It's a picture of Tim Cane. And it quotes
18 something that says: Who needs a job when you have a female
19 president, let's give bankers their fair share too.

20 I don't even know what that means.

21 MR. FRISCH: That's kind of my point. This has -- I
22 don't know what this means.

23 Look, here is my view of 430-22, this has --
24 whatever the intention of the Government is, this has one
25 purpose, to inflame the jury and to prejudice the jury against

1 Mr. Mackey for making a reference to who needs a job when you
2 have a female president.

3 THE COURT: What does that even mean?

4 MR. FRISCH: I don't know, but it seems inflammatory
5 to me.

6 THE COURT: I'm looking at it. I'm trying to see
7 something. It's kind of -- I don't know what it means.

8 MR. PAULSEN: Your Honor, this is a tweet by
9 HalleyBorderCol, one of the identified co-conspirators in this
10 group. She shared a meme with a fake Hillary logo on it,
11 which Ricky Vaughn then pushed back to the group saying: This
12 is great. Again, sharing the work of a co-conspirator on a
13 false Hillary Clinton ad, presumably for future propagation.

14 This is necessary background for what comes later,
15 it ties the defendant with a co-conspirator on the
16 distribution of memes that aided the campaign. I think this
17 is fairly on the nose. I don't think the content is
18 inflammatory.

19 THE COURT: I don't think it's sexist. I don't know
20 what it is. It could be complementary, you don't need a job
21 because the female president is doing such a great job. I
22 confess, maybe it's a failure of imagination on my part, or
23 maybe I'm not attuned to what is sexist about it, but I don't
24 get it.

25 MR. FRISCH: This is July 2016 as well. I'd like to

1 think I'm somewhat course about these things and don't get
2 unduly inflamed and have seen it all or a bunch of it. If
3 something strikes me, if something makes me cringe, it makes
4 me -- Mrs. Clinton would have been the first female president.
5 She was defeated by Mr. Mackey's candidate of choice. It
6 strikes me that it has an unduly prejudicial affect, which
7 outweighs the probative value.

8 THE COURT: I don't think that's a reason to exclude
9 it. She lost the election. I don't think that's sexist or
10 not. But I don't even -- sometimes in life I've had the
11 opportunity to consider whether something is gendered or not,
12 I don't think it is.

13 But I think it is relevant to the creation of these
14 fake memes that look like they are coming -- maybe I'm using
15 the wrong word -- looks like it's coming from the Clinton
16 campaign. So I am going to deny, overrule that objection and
17 you have an exception.

18 The next one is 430-24. The objection is to this
19 message which reads from Mr. Mackey: Hillary Rotten Clinton
20 is now trending. Push this one, this is hilarious,
21 misspelled.

22 What is it, the rotten?

23 MR. FRISCH: First of all, it's cumulative. There
24 is a lot of chats and memes, we've seen some just now. There
25 are others when the summary witness testifies where there is

1 discussion of pushing and trending and putting this out there,
2 and making this meme, and so forth. We don't know what this
3 is, what is being referred to.

4 Again, perhaps I'm unduly sensitive, but it's a
5 pejorative about Mrs. Clinton. The word Hillariod (ph), maybe
6 it's a typo, maybe it was intended that way. It has limited
7 probative value. I think we have to be careful when we're
8 talking about people expressing opinions during the course of
9 a campaign and taking action which supports their candidate of
10 choice in a way that not illegal. I think we have to be
11 careful with these types of statements.

12 MR. PAULSEN: Your Honor, I guess I would only add
13 that although we have 19 witnesses, they are all fairly small
14 witnesses. This is fundamentally a document case. The
15 summary witness who is going to testify today is in many
16 respects the core you of our case. It is several hours of
17 these the culling pieces of the defendant's statements over a
18 long period of time, in which he was, as we heard today,
19 tomorrow became this MIT certified, essentially, influencer
20 while involved in these groups. His intent is on display, and
21 the tactics they used are on display.

22 I don't think there is anything particularly
23 problematic on this. We would ask some latitude in proving
24 that up, it is our burden to prove up his intent.

25 THE COURT: I always appreciate being reminded of

1 basic tenants of criminal law; but it's always good to be
2 reminded I don't mind.

3 I don't think it's unduly prejudicial. I'm not
4 100 percent sure of the relevance. I think it's certainly
5 part of the scheme to get your view out there, which as
6 counsel points out, is legal. But I have to say, I'm not
7 concerned in the context of this case that particularly, since
8 as I said before, I'm sure jury selection was keyed to making
9 sure you didn't have people who couldn't consider this fairly.

10 But I have to say, I don't see the necessity for
11 this one. You haven't explained to me, except that you have
12 to prove your case, which I know.

13 MR. PAULSEN: Your Honor, I guess it would be one
14 more example of in the couple of months before the election of
15 the defendant saying, we should be pushing collectively
16 something, a disparaging meme. We can redact that last
17 sentence.

18 THE COURT: Why don't we leave this one out. If
19 something happens, all of these rulings are subject if
20 something comes up during the trial that makes them either not
21 relevant or relevant, we can always revisit it. So that one,
22 let's keep that one out.

23 The next one is 430-38. This is something that
24 Mr. Mackey, I guess it's part of a conversation, and it's a
25 picture of the former Secretary of State looking like she's

1 about ready to cough. And it the objection is that it's
2 unflattering, cumulative, and unduly prejudicial.

3 MR. FRISCH: And it's not a faux Clinton -- doesn't
4 have the appearance of mimicking a Clinton ad or a Clinton
5 posting. It's just a disparaging picture of a candidate, who
6 I might remind the Court, had headquarters across the street.
7 I just think it's too much.

8 THE COURT: What does that have to do with anything?

9 MR. FRISCH: Because it's Brooklyn.

10 THE COURT: I know.

11 MR. FRISCH: I wasn't saying to remind your Honor of
12 that. I think it's a disparaging picture of a popular
13 political figure in these parts. It's unnecessary to prove
14 their case.

15 THE COURT: That, I must say, I don't think is an
16 issue here, about whether it's Brooklyn or not.

17 But is this just another meme push? I think I'm
18 going to exclude this one, not because it's prejudicial. It
19 is somewhat cumulative. And again, if that should change, if
20 there is some pressing reason to reevaluate that, I'll grant
21 that objection.

22 MR. PAULSEN: Yes, your Honor. We'll redact.

23 THE COURT: The next one is 430-59. The objection,
24 this is, I don't think there is a claim this is not relevant.
25 This is October 29, 2016. And it's a picture of President

1 Biden then -- he was Vice President: We are proud to announce
2 a partnership between the FEC and social media companies
3 Twitter and Facebook, which will finally allow voting online.
4 All you have to do is post ClintonKaine, no spaces, with the
5 hashtag presidential election on November 8 between eight and
6 6:00 p.m. That's it.

7 And it's alleged have come from President Biden at a
8 Hillary for America rally. It's got the Hillary Clinton,
9 whatever the H is, with the blue arrow.

10 Objection is that Mr. Mackey didn't send it. What
11 is your position on this?

12 MR. PAULSEN: Your Honor, this group had created
13 various iterations of this particular scam. They did one with
14 Biden.

15 THE COURT: I think it's relevant, so the objection
16 to that is overruled and you have an exception.

17 The next one is 30-66. This is something -- who is
18 Fatty Vic Burger? Is he alleged be a co-conspirator?

19 MR. PAULSEN: No, your Honor, just a member of the
20 group who sends to everyone else information about what
21 happened.

22 THE COURT: This looks like he's sending a tweet
23 from someone which reads: LOL the awful band Ricky Vaughn
24 account tried to come back and is now suspended again for
25 spreading false voting information.

1 Somebody else says: I reported his new account so
2 many times.

3 MR. PAULSEN: I think it's a screenshot, basically
4 they are sending pictures of people who are upset about Ricky
5 Vaughn. They are enjoying that other people are celebrating
6 his removal. We redacted that picture in it.

7 THE COURT: What is the picture?

8 MR. PAULSEN: I don't remember what it is at this
9 point. It was a picture that Mr. Frisch didn't like. The
10 fact that Ricky Vaughn was suspended for that reason comes out
11 in various other sources. It was here mostly to show that the
12 individuals in the group were talking about his suspension.
13 The conclusions are not terribly relevant to the Government.
14 It's the mere fact of them talking that is relevant to us.

15 THE COURT: What is the relevance of that? The
16 affect on the listener or the reader?

17 MR. PAULSEN: This is the group that the defendant
18 called attention to in his opening, that the defendant leaves
19 this group when he's suspended, then doesn't come back in
20 until about a week later. So some of the discussion of this
21 happens before he leaves, but most of it happens after, while
22 other discussions are happening in other groups.

23 There was an objection before Judge Garaufis that
24 this shouldn't be included at all because the defendant wasn't
25 there at this precise time. We've established through

1 evidence there was linkages between the various groups. And
2 that their constant interest in Ricky Vaughn while he's out,
3 suggests to us further linkages between the people in the
4 group and the defendant. It was left in for that purpose,
5 your Honor.

6 MR. FRISCH: I'm not sure I understand that. These
7 are not -- so Mr. Mackey, Mr. Vaughn, is not in this, number
8 one.

9 Number two, these are not co-conspirators.

10 I can't, even putting on my former prosecutor's hat
11 on, I can't imagine how I could articulate a legitimate reason
12 for putting this in. It's hearsay. It doesn't -- they are
13 not conspirators. He's not there. I don't see what the basis
14 is.

15 MR. PAULSEN: The room is filled with
16 co-conspirators, Fatty Vic Burger is on.

17 THE COURT: I take the point that it's not hearsay
18 because it's not introduced for the truth but for the affect
19 on the listener. But I don't see that that is particularly
20 relevant. Maybe it's a failure of imagination on my part, at
21 least not whether he's -- I think we already had testimony
22 about him being banned. So I don't think it's -- I'll sustain
23 the objection on that, and the Government has an objection to
24 the ruling.

25 The last one is 430-69, it's from Mr. Mackey. And

1 it says: LOL did we meme blacks into calling each other. And
2 then there is -- I'm not familiar with the phrase but --

3 MR. PAULSEN: It's a derogatory term.

4 THE COURT: It's clearly a derogatory phrase. But
5 according to the defense, it was used by an African American
6 pop star who supported the former president; is that correct?

7 MR. FRISCH: Yes. My objection to this is that it
8 comes after the posting.

9 THE COURT: Is that two word --

10 MR. FRISCH: It's just the two words. It's an
11 extraordinarily inflammatory phrase, however, whatever the
12 origin of it is. It's just, it's extraordinarily -- I want to
13 argue, it's an example of some sort of paradigmatic example of
14 why we have 403. There are other things the Government can
15 point to to underscore what it believes is the targeting of
16 the memes. This strikes me as being a bit much.

17 MR. PAULSEN: Your Honor, we're fine with redacting
18 that word.

19 THE COURT: I was just going to propose that you
20 redact the word. Because the sentiment is, consistent with
21 what the Government is alleging, that the point of the
22 conspiracy was to target certain groups with the belief that
23 they would fall for whatever the defendant was doing. If you
24 just want that word out, that's what they are going to do.

25 MR. FRISCH: I would like the whole thing. I think

1 even without it, it creates, it invites imagination as to what
2 word is there. I don't think -- I think the whole thing
3 should be out. I certainly want the phrase out, but there is
4 so much the Government has to work with on this issue. It
5 strikes me that this page, this particular exchange, coming
6 when it does and having such attenuated connection to their
7 theory should not come in at all.

8 THE COURT: I think it has a direct connection to
9 their theory. It's a word that your client used. So it's his
10 statement. We're taking steps to sanitize it in some respect,
11 but it's directly relevant.

12 And one of the things the jury will be instructed to
13 do is not to speculate. So I trust that they will follow that
14 instruction. You have an exception to that ruling. I think
15 we've gone through the list.

16 MR. PAULSEN: We have, your Honor.

17 MR. FRISCH: We have.

18 THE COURT: I will see you all back here at 2:30.
19 Have a good lunch everybody.

20 (Lunch recess.)
21
22
23
24
25

PROCEEDINGS

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1 THE COURT: Okay. Are we ready for the jurors?

2 MR. PAULSEN: Yes, your Honor.

3 THE COURT: Mr. Frisch.

4 MR. FRISCH: Yes.

5 THE COURT: Okay.

6 (A brief pause in the proceedings was held.)

7 COURTROOM DEPUTY: All rise.

8 (Jury enters courtroom.)

9 COURTROOM DEPUTY: You may be seated.

10 THE COURT: All right. Ladies and gentlemen, I'm
11 sorry we got started a little bit late but I think we ended up
12 saving you some time. So, anyway, we are ready to proceed.

13 Are you ready to call your next witness?

14 MR. PAULSEN: Yes, your Honor. The Government calls
15 Special Agent Anthony Cunder.

16 (Witness takes the witness stand.)

17 **ANTHONY CUNDER**, called as a witness, having been first duly
18 sworn/affirmed, was examined and testified as follows:

19 COURTROOM DEPUTY: State your name for the record.

20 THE WITNESS: Anthony Cunder. C-u -n-d-e-r.

21 THE COURT: Couple of things before we get started.

22 I want to make sure everybody can hear you and don't
23 speak too quickly. I don't want to be too hard on the Court
24 reporter.

25 If there is a question you don't understand or want

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1 have to repeated, just tell me. And just do your best to
2 answer the question you're being asked.

3 THE WITNESS: Okay.

4 THE COURT: Go ahead.

5 MR. PAULSEN: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. PAULSEN:

8 Q What is your current position?

9 A Special agent.

10 Q Where do you work?

11 A The U.S. Attorney's Office.

12 Q And what are your duties as a special agent in the U.S.
13 Attorney's Office?

14 A Investigating criminal activity, serving court orders,
15 search warrants, reviewing evidence, and testifying at trial.

16 Q What's your background prior to being a special agent
17 with the U.S. Attorney's Office?

18 A I was a special agent with the U.S. Secret Service for
19 about four years.

20 Q Okay. And prior to that?

21 A I was a police officer in Union City, New Jersey.

22 MR. PAULSEN: Your Honor, in connection with this
23 witness, we'd like to read four stipulations at various
24 occasions.

25 Should I do what we did with the first one and just

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1 read the text?

2 THE COURT: Yes, I don't think you need to read the
3 caption so go right ahead.

4 MR. PAULSEN: First stipulation is going to be
5 Government Exhibit 901.

6 The parties agree that if called as a witness at
7 trial, a custodian of records for Twitter Inc., (Twitter)
8 would testify that:

9 Twitter provided records to the Government from
10 numerous Twitter accounts (the Twitter records). The Twitter
11 records consisted of true and accurate copies of records of
12 Twitter. The Twitter records provided to the Government were
13 kept in the course of business regularly conducted activity.

14 It is the regular course of Twitter's business to
15 generate these records and Twitter records were made at other
16 near time of the condition, act, transaction, or event
17 described therein by or within a reasonable time thereafter.

18 The parties agree that Government Exhibits 100,
19 101, 102, 110, 111, 112, 120, and 121, and 130 are Twitter
20 records are authentic business records and admissible into
21 evidence.

22 The parties further agree that Government Exhibits
23 assembled from tweets, direct messages, and group direct
24 messages including Government Exhibits 400, 401, 410, 411,
25 420, 430 to 431 and similar events containing materials from

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1 the same sources collectively "the Twitter exhibits" are
2 compiled, and from accurately reflect the content of, the
3 Twitter records excepting modifications made with the consent
4 of the parties and/or the Court.

5 To the extent that the Twitter exhibits contain
6 Twitter records, the parties therefore agree that the Twitter
7 exhibits are based on authentic business records of Twitter.

8 Your Honor, the Government moves this stipulation
9 marked 901 into evidence.

10 THE COURT: It's a stipulation so I take it there is
11 no objection?

12 MR. FRISCH: That's right.

13 THE COURT: All right. That's in evidence.

14 (Government Exhibit 901, was received in evidence.)

15 MR. PAULSEN: And, your Honor, as a bit of
16 housekeeping. There was an earlier stipulation 900 that was
17 read into evidence. I don't believe we actually asked to have
18 the stipulation moved into evidence.

19 THE COURT: That's in evidence, too.

20 MR. PAULSEN: Okay. Thank you very much.

21 (Government Exhibit 900, was received in evidence.)

22 MR. PAULSEN: First off, Special Agent Cunder -- may
23 I approach?

24 THE COURT: Yes.

25 MR. PAULSEN: Your Honor, showing the documents

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1 admitted into evidence through the prior stipulation. 100,
2 102, 110, 111, 112, 120, 121, and 131.

3 THE COURT: They're all stipulated?

4 MR. FRISCH: They're all stipulated.

5 THE COURT: Those are in evidence.

6 EXAMINATION BY

7 MR. PAULSEN:

8 (Continuing.)

9 Q Special Agent Cunder what are these documents?

10 A These are records from Twitter pertaining to various
11 Twitter accounts.

12 Q What kind of records are they? What kind of information
13 do they contain?

14 A They have an account creation timestamp, they have
15 e-mails associated with the account, they have the screen
16 names for the account, they have bio that's associated with
17 the accounts.

18 Q Okay. Are there also documents related to suspension
19 times?

20 A Yes.

21 Q The first three : 110, 111, and 112 -- I'm sorry.

22 100, 101, and 102 what account do those relate to?

23 A It says Ricky_Vaughn 99.

24 Q The next trio: 110, 111, and 112. What account do those
25 refer to?

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1 A TheRickyVaughn.

2 Q The next two : 120 and 121. Which account do those
3 refer to?

4 A ReturnofRV.

5 Q And then, finally, the last one, 130. What account does
6 that refer to?

7 A AmyStephen.

8 Q All right.

9 MR. PAULSEN: Your Honor, I now would you like to
10 read the next stipulation, 902.

11 THE COURT: Okay.

12 MR. PAULSEN: The parties agree as follows:

13 The defendant Douglass Mackey controlled and used
14 the following Twitter accounts during the periods:

15 @RickyVaughn 99 from at least July 2015 to,
16 approximately, October 5, 2016.

17 @TheRickyVaughn from October 8, 2016 to November 2,
18 2016.

19 And @ReturnOfRV from, approximately, November 2,
20 2016, to approximately, November 15, 2016.

21 The Government moves Government Exhibit 902 into
22 evidence.

23 THE COURT: Okay. No objection?

24 MR. FRISCH: Yes.

25 THE COURT: All right. I take it there no objection

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1 to any of these.

2 MR. FRISCH: No.

3 THE COURT: So that's in evidence.

4 (Government Exhibit 902, was received in evidence.)

5 MR. PAULSEN: Thank you, your Honor.

6 EXAMINATION BY

7 MR. PAULSEN:

8 Q Special Agent Cunder, you mentioned a moment ago that the
9 paper documents, the exhibits that are in front of you, they
10 indicate the time periods that the defendant was suspended
11 from Twitter; is that correct?

12 A Yes.

13 Q I'd like to focus your attention on the specific time
14 period, September 26th to November 8th. This is the
15 approximate six weeks before the 2016 election.

16 And we have at your disposal Government Exhibit 902.
17 What account was the defendant using at the beginning of this
18 time period?

19 A Ricky_Vaughn99.

20 Q And in the middle section of that time period?

21 A TheRickyVaughn.

22 Q And what account was he using at the end?

23 A ReturnofRV.

24 Q Were there time periods during that stretch when the
25 defendant wasn't using Twitter?

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1 A Yes.

2 Q What were those stretches?

3 A The two account suspensions. The first account
4 suspension was October 5th. The second account suspension
5 was November 2nd. There was also a third period in October
6 from about October 20th to October 25th and that immediately
7 follows a tweet where he references going on vacation.

8 Q Okay. So, in addition to the vacation, it was the gap of
9 time in between the accounts where the defendant wasn't on
10 Twitter?

11 A Yes.

12 Q The first stipulation I read referenced some other
13 exhibits. It was Government Exhibits 200, 400, 401, 410 and
14 so on.

15 The stipulations stated that those are authenticate
16 Twitter records; is that right?

17 A Yes.

18 Q I'm going to show you some documents from those materials
19 and will be presenting them electronically page by page and
20 publishing them piece by piece on the screen.

21 Are you familiar with those materials?

22 A Yes.

23 Q You've reviewed them?

24 A Yes.

25 Q What kind of Twitter materials went into those exhibits?

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1 A Various tweets, direct messages between Twitter users,
2 and group messages.

3 Q Is there also information from Twitter obtained by a
4 subpoena and other process?

5 A Yes.

6 Q How were those materials generally obtained?

7 A Through either search warrant or court order such as the
8 subpoena.

9 Q Now, do the materials you're about to present to the jury
10 in Court, do those present everything that the Government got
11 from Twitter?

12 A No, they don't.

13 Q So these are selections from those materials?

14 A Yes.

15 Q Have you reviewed the accuracy of the materials at that
16 are about to be presented?

17 A Yes.

18 Q Do these materials fairly and accurately present the
19 materials that the Government received from Twitter with the
20 understanding that the parties and the Court have modified or
21 redacted certain circumstances --

22 A Yes.

23 Q -- certain portions. Okay.

24 Do these materials include the statements of the
25 defendant?

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1 A Yes.

2 Q Do they include the statements of other individuals
3 talking to the defendant?

4 A Yes.

5 Q And do these include some statements from groups when the
6 defendant was suspended from Twitter?

7 A Yes.

8 MR. PAULSEN: Your Honor, I'd like to begin by
9 showing the witness what's been marked as
10 Government Exhibit 200.

11 THE COURT: Okay.

12 MR. PAULSEN: And it's Subsection A.

13 Q Have you reviewed 200-A, Special Agent Cunder ?

14 A Yes.

15 MR. PAULSEN: We're just showing for the witness
16 only, your Honor.

17 THE COURT: Okay.

18 A Yes, I see it.

19 Q And these are some of the materials you've checked for
20 accuracy?

21 A Yes.

22 MR. PAULSEN: Your Honor, the Government moves
23 admission of 200-A.

24 THE COURT: Any objection?

25 MR. FRISCH: Only as discussed.

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1 THE COURT: That's in evidence.

2 (Government Exhibit 200A, was received in evidence.)

3 Q All right. So, Special Agent Cunder, in the first
4 document what I'd like for you to do is explain to the jury.
5 The materials that are at the top of each document, I
6 understand each document will be fairly similar but I'd like
7 you to kind of guide them for the first one what we're looking
8 at?

9 A So this is a graphical rendering by the Government of the
10 raw data that Twitter provided.

11 This is a conversation between two Twitter users,
12 the user I.D.s are the numbers at the top next to the
13 conversation I.D. below that are the Twitterer screen flames
14 of the two Twitter users. There's also a date and various
15 timestamps below the messages.

16 Q All right. So this is a conversation between
17 Ricky_Vaughn99 and AmericanMex67.

18 Special Agent Cunder, can you read this into the
19 record?

20 A Would you mind zooming out? The left side is cut off a
21 little bit.

22 So it's a conversation between AmericanMex and Ricky
23 Vaughn on May 10, 2016.

24 AmericanMex say: Stupid question can a meme be
25 anything other than a picture with writing on it?

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1 Defendant replies: Yeah, definitely.

2 AmericanMex says, This is my understanding of a
3 meme.

4 And it includes a link. Below it there's an image.

5 The defendant replies: Meme is any kind of idea
6 that spreads from person to person. Memes can be represent
7 visually, that pic is sort of a low effort meme.

8 AmericanMex replies: And with well written tweets.
9 Yes, super logical effort.

10 Defendant replies: A well written tweet can
11 definitely become a meme. An example is lying Ted. That's
12 now a meme. Everyone understands it. Really good memes go
13 viral.

14 AmericanMex replies: Makes sense now.

15 Defendant says: Really, really shall memes become
16 embedded in our consciousness.

17 AmericanMex says: Thanks for the input.

18 Q Special Agent Cunder, the next page has some follow-up
19 with those same two individuals can you read them?

20 A Yes.

21 Q AmericanMex says: Whipped this up right quick. Never
22 knew much about the meme until you boss man showed up on
23 Twitter.

24 Defendant says: Hell yeah! That's great. Thanks.
25 Memes make the world go round.

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1 Q Special Agent Cunder, did you review documents in which
2 the defendant broadly discussed how to use social media
3 including using things like memes?

4 A Yes.

5 MR. PAULSEN: Your Honor, I'd like to show the
6 witness what's been marked for identification as
7 Government Exhibit 200-B.

8 THE COURT: Okay.

9 MR. PAULSEN: And we moved this into evidence?

10 THE COURT: I take it this is subject to any
11 discussions we had.

12 MR. FRISCH: For all of this only subject of
13 discussions.

14 THE COURT: That'll be in evidence.

15 (Government Exhibit 200B, was received in evidence.)

16 THE COURT: And just, Counsel, is that going to be
17 the same response?

18 MR. FRISCH: I think for everything that this
19 witness is going to testify to.

20 THE COURT: Great.

21 Q All right. So Special Agent Cunder, if you could start
22 reading?

23 A So this is a conversation between a Twitter user
24 Bidenshairplugs and the defendant.

25 Bidenshairplugs says: Nice work! You're trolling

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1 up a storm.

2 Defendant replies: Excellent. Thanks for the
3 support.

4 The goal is to give people simple lines they can
5 share with family or around the water cooler.

6 Q Turning to the next page.

7 A Defendant continues so I aggregate content.

8 Q Special Agent Cunder, if I could interrupt you for a
9 second.

10 The top of this says "group message I.D." and
11 there's just one number. What does that indicate?

12 A Yes. So this is a group message between multiple Twitter
13 users. Whenever there's a single number, that would indicate
14 a group message as opposed to the two numbers side by side.

15 Q We'll get to this later, but do some groups have names?

16 A Yes.

17 Q We will see that at a later time; is that right?

18 A Yes.

19 MR. FRISCH: Your Honor, before we continue, can I
20 have a one quick word with Mr. Paulsen.

21 THE COURT: Okay.

22 (A brief pause in the proceedings was held.)

23 Q So, Special Agent Cunder, for each one, if you could, if
24 you could read the date at the top before diving into the
25 text.

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1 A So this is January 9, 2016.

2 The defendant says: So I aggregate content, troll,
3 meme, and comment .

4 One thing that helped was I decided to stop
5 tweeting from my phone.

6 You can collect a really good image meme collection
7 respond to high-profile characters with a perfect image meme
8 response.

9 Images work better than words.

10 400,000 impressions.

11 HelloRaspberry says: That's the modern age for you.
12 Very visual.

13 Defendant says: Planted a lot of seeds.

14 Q Turning to the next page.

15 A This is January 9, 2016.

16 Rabite says: That shit works really effective.

17 I feel I'm really good at dialogue, closing an am
18 sale personal interaction.

19 KawaiiKraken says: Yeah, I'm starting to feel a
20 mismatch in my effective memes on here.

21 Rabite says: We should collaboratively work on a
22 guide.

23 Like, step by step, each major aspect of the
24 ideological disruption toolkit.

25 Q Turning to the next page, the continuation.

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1 A KawaiiKraken says: Hell, Ricky, I looked through your
2 feed and was admiring. You're doing good with those methods.

3 Rabite says: You could outline your methods of
4 commentary.

5 TOG it a bit on placement.

6 We could turn out a book like this. Divide profits
7 and hand people a fucking manual for psychological loldongs
8 terrorism.

9 Defendant says: Yes, weev, that would be good.

10 Rabite says: I could do another chapter on
11 methodologies from the ads industry--shit like my twitter ads
12 stuff was very much the result of careful targeting, nobody's
13 managed to replicate it properly since.

14 Q Continuing to the next page.

15 A Still on January 9th.

16 Rabite says: Honestly at this point i'vehand
17 converted so many shitlibs that like, iam absolutely sure we
18 can get anyone to do or believe anything as long as we come up
19 with the right rhetorical formula and have people actually try
20 to apply it consistently.

21 HelloRaspberry says: People are bored right now,
22 the media and entertainment has gotten really stale. Theresno
23 youth movements like punks or grunge or anything anymore, its
24 just how big of a slut you can be. We are the only thing even
25 close.

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1 Defendant says: Weev I any you're right.

2 I'm getting face-to-face, now converting people to
3 Trump. Part of that is, of course, Trump has become popular.
4 But still I don't chicken out and hide my views.

5 Q Special Agent Cunder, can you turn to page -- and read
6 the next day?

7 A So this is direct message between ReactionaryTree and
8 the defendant on January 26, 2016.

9 Defendant says: It's a good plan. Trouble is that
10 it's hard to get hashtags to take off with effort, it usually
11 happens spontaneously.

12 We can hastags with memes, though.

13 ReactionaryTree says: I think the OP is suggesting
14 we hijack popular trending hashtags.

15 Defendant says: Yep. That's a good idea.

16 Q Special Agent Cunder, do you know what OP tends to mean
17 in internet parlance?

18 A Original poster.

19 Q Before we go further, these conversations, direct
20 messages and group messages, were any of these publicly
21 available?

22 A No.

23 Q So these are the private conversations between the
24 defendant and other people; is that right?

25 A Yes.

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1 Q If you could turn the page it 200-B-7?

2 A This is a direct message between the defendant and
3 AmericanMex for June 22, 2016.

4 AmericanMex says: You think people will care about
5 these kind of connections? People as the undecided voters.

6 Defendant says: Yes. Repetition is key. Cooked
7 Hillary created ISIS with Obama repeated again and again.

8 AmericanMex says: Word.

9 Defendant says: I just ltweeted it . Memes would
10 also be good perhaps.

11 Q Okay. The next page.

12 A This is a direct message between BasedMel and the
13 defendant July 3, 2016.

14 Defendant says: By the way, I'll be starting a meme
15 brainstorm group of talented people. I'll invite you.

16 On July 4th, BasedMel says: Okay.

17 Defendant says: I retweet all your stuff, it's
18 terrific.

19 Q Next page.

20 A This is a direct message between the defendant and
21 Twitter user.

22 Defendant says: A few a day is good.

23 Twitter user replies: I can only do a few a day.
24 I'll hit you only once per graphic. Thank you.

25 Defendant says: Thanks. I'll retweet these

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1 tomorrow.

2 Q And then one more.

3 A Again, a direct message between the defendant and a
4 Twitter user, October 5, 2016.

5 Twitter user says: Hey, Ricky thank you for all the
6 retweets. You have true power of the retweet. I saw many big
7 accounts on here but their tweets don't take off like yours.
8 You have a real crowd. If you have any advice for me on how
9 to reach more people let mean know.

10 Defendant says: Okay. I'll give a few tips . I
11 would says sigh use fewer hashtags. Maybe only use one
12 hashtag and a simple short message.

13 Other than that, you're doing everything right.
14 I'll keep retweeting you. Twitter user says: Thank you man.

15 MR. PAULSEN: I would like to show the witness what
16 has been marked as Government Exhibit 200-C.

17 THE COURT: Okay.

18 Q Special Agent Cunder, in reviewing documents, you saw
19 some references of the defendant retweeting others and moving
20 their things along; is that right?

21 A Yes.

22 Q And can you read the first page here?

23 MR. PAULSEN: Your Honor, we ask that this be moved
24 into evidence subject to the defendant's.

25 THE COURT: All right.

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1 MR. PAULSEN: Subject to our previous discussion.

2 THE COURT: Subject to our previous discussions,
3 that's in evidence.

4 (Government Exhibit 200C, was received in evidence.)

5 Q Special Agent Cunder, can you read this one?

6 A This is a direct message between a Twitter user and the
7 defendant, December 6, 2015.

8 Twitter user says: Could you tweet to your fans to
9 follow my page? I want to get to 30,000 plus followers this
10 week. You're on fire again today.

11 Defendant says: Okay. For sure.

12 Q The next page.

13 A This is a direct message between Western_Triumph and the
14 defendant December 6, 2015.

15 Western_Triumph says: By the way, man. My pinned
16 tweet was a winner, I knew it was but only had five retweets.
17 Needed that big one to put it out there. You did it. And now
18 24 hours later it's hitting 200 retweets. Thank you.

19 Defendant says: No fucking way, LOL, awesome.

20 Q Let's skip ahead to Page 5, Ms. Parshad.

21 A This is a direct message between Western_Triumph and
22 February 7, 2016.

23 Western_Triumph says: Holy shit, Ricky, that tweet
24 of mine you tweeted out was just retweeted it by Ann Coulter.
25 She retweeted a second tweet of mine. Thank you.

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1 Defendant says: Hell, yeah.

2 Q Turn to Page 7.

3 A This is a direct message between the defendant and
4 TedBusiek, July 7, 2016.

5 TedBusiek says: Appreciate it, brother. Like I
6 said, you're a Twitter legend.

7 The next day the, defendant says: Thanks a lot.
8 We'll throw you some support.

9 Q The next page?

10 A Direct message between of the defendant TedBusiek,
11 August 9, 2016.

12 Defendant says: Going to try to boost your
13 followers.

14 Ted says: You're one of my most key allies at this
15 point. You have become Twitter kingmaker.

16 Defendant says: LOL. Thanks, bro.

17 Q And then the last page in this series?

18 A This is a direct message between SeanMichaelR and the
19 defendant, October 16, 2016.

20 SeanMichaelR says: Hey, dude, can you follow
21 @NathanDamigo. We may need your power to boost something
22 going on tomorrow.

23 Defendant says: Got it.

24 SeanMichael says; thank you and thank you for your
25 work. Thumbs up emoji.

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1 Q Special Agent Cunder, in reviewing these documents, did
2 you review documents in which the defendant discussed his
3 sense of his own reach on Twitter how much his work was
4 spreading?

5 A Yes.

6 MR. PAULSEN: I would like to show the witness
7 Government Exhibit 200-D and move it into evidence subject to
8 the defendant's prior comments.

9 THE COURT: All right. Subject to the prior
10 discussions it's in evidence.

11 (Government Exhibit 200D, was received in evidence.)

12 Q Special Agent Cunder, can you read this one from the
13 beginning?

14 A So this is in a group message between various Twitter
15 users November 14, 2015.

16 The defendant says: I had 600,000 impressions the
17 other day. I'm friends with the account @OldRowOfficial.
18 When he retweets me, that is 30 to 50,000 impressions
19 immediately.

20 Q Turn to the next page.

21 A Again from the group message November 19, 2015.

22 Defendant says: Thanks to weev, I'm improving my
23 rhetoric. People love it. My Twitter account is just
24 exploding.

25 BenedictKMiller says: You're taking off like a

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1 rocket . I remember when you had 900 followers.

2 Defendant says: 900 followers in ten days. I used
3 to get 200,000 impressions on a good day. Now I'm averaging
4 300,000.

5 BenedictKMiller says: Bringing the heat.

6 Defendant says: 7.2 million impressions over
7 28 days. I just hope all this shitlording goes real life.

8 Q Special Agent Cunder, do you know what an impression is?

9 A So that's when a Twitter post is basically visible on
10 another Twitter user's news feed.

11 Q Can you pick up the next page, Page 3?

12 A This is from a group message, November 19, 2015.

13 The defendant says: I picked up a thousand
14 followers in the last ten days.

15 Q The next page.

16 A From a group message, November 21, 2015.

17 Defendant says: Give him the memes, boys.

18 SOBL says: Holy shit, just checked Ricky's profile.
19 I remember when you had 300 followers. Fucking A.

20 Rabite says: Ricky's audience expands rapidly, he's
21 now a leading polemicist.

22 Q The next page.

23 A This is from a direct message between Twitter user and
24 the defendant November 23, 2015.

25 Defendant says: Getting closer to just going all

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1 out. I have the personality and the ability to convince
2 people now.

3 Twitter user says: How do you mean, "getting closer
4 to just going all out"?

5 Defendant says: I mean all out, just mean stating
6 my opinion flat out.

7 Q The next page.

8 A This is from a group message December 5, 2015.

9 JBurtonXP says: Hey, Plugs. Good to have you in
10 the chat. This is a pretty good spot to coordinate trolling
11 et cetera.

12 Defendant says: We each have our own loyal band of
13 followers now. This chat has birthed Twitter legends.

14 Q All right. Special Agent Cunder if you could turn the
15 page to Page 7 .

16 Who is this conversation with?

17 A This is between AltRightInfo and the defendant.

18 Q And that's the account of Amy Stephen; is that right?

19 A Yes.

20 Q If you could read this.

21 A This is from January 7, 2016.

22 AltRightInfo says: So what would it fake for you to
23 come out as yourself?

24 Defendant says: I'm not coming out as myself.

25 Defendant says: This identity is very powerful. I

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1 have something great going on.

2 Q The next page.

3 A Direct message between AltRightInfo and the defendant,
4 January 11, 2016.

5 Defendant says: I'm going to start preparing myself
6 mentally, spiritually and physically to be a leader.

7 AltRightInfo says: You're doing it already.

8 Defendant says: I never asked or wanted to be a
9 leader, but so many people are asking it of me so I feel a
10 responsibility.

11 Q The next page.

12 A This is from a group message January 20, 2016.

13 SOBL says: Ricky, you're getting insane publicity,
14 man. The man behind the meme is a great description.

15 Q Special Agent Cunder, can you turn to Page 10. The next
16 one.

17 A Direct message between AltRightInfo and the defendant
18 January 28, 2016.

19 AltRightInfo says: Do you have goals? A team?
20 Tasks? Assignments? Happy to take on something if it's
21 helpful.

22 Defendant says: I should, right? I have, like, the
23 most loyal army on Twitter I can get anything I want photo
24 shopped in an hour. I have people offering to do web design
25 for me. My Twitter account is just exploding.

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1 Q The next page.

2 A This is from a group message January 29, 2016.

3 Deutschephysi_k says: Damn, Ricky, your followers
4 really watch your tweets. Activity level when you retweet is
5 absurd.

6 Defendant says: Yeah, JPL I have the most active
7 fans.

8 Q Next page, Special Agent Cunder.

9 A This is from a group message, March 16, 2016.

10 SOBL says: Ricky Vaughn has transitioned from a
11 troll to a media institution himself. CP has transitioned
12 from a troll to a form of stand-up social media comedian.
13 This is amazing to watch in real- time.

14 When I see Ricky tracking election results and
15 getting hundreds of retweets which dwarfs legit journalists
16 discussing an election it is mind blowing.

17 JBurtonXP says: When you look at the followers, all
18 these vocal Trump accounts are blowing up. It really is a
19 movement even on here.

20 SOBL says: Yes, the followers on our side are far
21 more sticky or engaged than regular media people.

22 March17, 2016.

23 Defendant says: Thanks SOBL, great point. Our
24 engagement is absolutely tremendous. 50 to 75,000 mentions
25 per month, that's insane.

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1 Q Can you turn to the next page, Page 13.

2 A This is from a group message, May 4, 2016.

3 Rabite says: It's fucking astonishing how much
4 reach our little group here has between us, and it'll solidify
5 and grow after the general.

6 Defendant says: Great work guys. This is where it
7 all started.

8 We did it.

9 This little Twitter group is fucking legendary.

10 I feel a giant sense of relief. This sounds dumb
11 for the past six months, I sacrificed giant slight of my life
12 to shitposting.

13 Looking forward to taking my foot off the gas.

14 JBurtonXP says: No, I feel you Ricky.

15 (Continued on the next page.)

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1 Q It continues to the next page.

2 A Again, group message, May 24, 2016. Tim Burton says I'm
3 nowhere near at your volume. And even I feel like I want to
4 take a few days off, but you did it my man. Even MIT knows
5 that you did it? Defendant says, MIT certified best poster.
6 Shit, I should put that in my bio. PutinZooPark says it's
7 amusing how this group literally has every media segment
8 covered. Social to blogs and online to international
9 mainstream LOL.

10 MR. PAULSEN: The next page.

11 A From a group message May 11, 2016, defendant says so by
12 the way, did you see my fucking meme in the Ann Coulter hit
13 piece? SwiftOnEconomy says, well you're in the top 150
14 election influences. Someone says Ricky, you're an influencer
15 now. You literally cause more seismic activity than paid
16 professionals.

17 Q Special Agent Cunder, if you can turn to the next page.
18 So this looks a little different. This is looks like a
19 tweet; is that right?

20 A Yes.

21 Q Now, I think you mentioned this before, but the materials
22 that were provided by Twitter to the Government was just the
23 raw material of a tweet; is that right?

24 A Correct.

25 Q Is it fair to say that the Government created this to

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1 look like a tweet?

2 A Yes.

3 Q And so the time is there, the date is there, the text is
4 there. But the rest had to be created; is that right?

5 A Correct.

6 Q And one more thing, the time. Do you know what time zone
7 Twitter materials are in?

8 A Yes. So Twitter provided materials in UTC, which is
9 Universal Coordinated Time.

10 Q Where how far off for the Eastern Time Zone is that?

11 A Five hours or 4 hours, depending on Daylight Savings
12 Time.

13 Q If you can read this tweet.

14 A This is a tweet from the defendant. He says, I'm happy
15 to report that Ricky Vaughn is averaging over 10,000
16 impressions per tweet in May. Not sad.

17 MR. PAULSEN: All right. If we can skip to 12. I'm
18 sorry, 18, Ms. Parshad.

19 A Another tweet from the defendant. National leaders
20 commence high level talks. Panic as Vaughn hits 30,000
21 followers.

22 MR. PAULSEN: Okay. You can skip to two more pages
23 to 20.

24 A Another tweet from the defendant. RT@SD99 T. When Ricky
25 Vaughn hits 50,000 followers, you're going to see some serious

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1 shit.

2 Q The next one.

3 A Another tweet from the defendant. Once people get a bite
4 of truth, they want the whole apple. That's why my account
5 now has 34,000 followers.

6 MR. PAULSEN: Ms. Parshad, if you can skip to 23.

7 Q Can you read this, Special Agent Cunder?

8 A This is a direct message between the defendant and Alex
9 Riley is cool. July 25, 2016. Defendant says I was in
10 Washington Post on July 15th. Alex Riley says link me. And
11 the defendant provides a link to a Washington Post article.

12 Q The next page. 24.

13 A This is from a group message July 27, 2016. Defendant
14 says we are past the point of pundits having an influence on
15 the election . Pundits have small audiences, their voices
16 will be drowned out my mass media. The election from here on
17 out will be decided by 60 percent earned media, 30 percent
18 social media, ten percent paid media.

19 Q The next page.

20 A This is a tweet from the defendant. If 7,000 followers
21 and 40 million impressions per month is considered
22 marginalization, I'll take it. And there's a link.

23 Q The next page, number 26.

24 A This is a direct message between a Twitter user and the
25 defendant, August 1, 2016. Defendant says it's like at any

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1 one time there's an army of 100 of my followers ready to
2 swarm.

3 MR. PAULSEN: All right. Ms. Parshad, if you can
4 skip to 28.

5 A This is a direct message between the defendant and a
6 Twitter user, November 4, 2016. Defendant says as long as I
7 can have an impact, I will be here. My fans are very
8 dedicated and they want to hear my voice and laugh at my
9 trolls.

10 MR. PAULSEN: And lastly, you can skip to 30.

11 A This is a tweet from the defendant. Your tweets earned
12 9,301,686 impressions over the last week.

13 Q Okay. Now, Special Agent Cunder, there was some
14 references to the MIT study in those documents; is that right?

15 A Yes.

16 Q Did the defendant frequently comment about that MIT
17 study?

18 A Yes.

19 MR. PAULSEN: I'd like to show you what's been
20 marked as Government Exhibit 200-E and move it into evidence.

21 THE COURT: Subject to the prior discussions.

22 (Government Exhibit 200E, was received in evidence.)

23 Q All right. Can you start reading on number one?

24 A This is a direct message between a Twitter user and the
25 defendant, March 25, 2016. The Twitter user posts a link to

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1 an article with the title who's influencing election 2016.

2 The Twitter user, again, says in the direct message who is
3 influencing election 2016, number 107, Ricky Vaughn.

4 Defendant says holy shit, thanks.

5 Q The next page.

6 A A direct message between Bidenshairplugs and the
7 defendant, March 25, 2016. Bidenshairplugs says you're on
8 this list of most important influencers on this election.
9 Number 107. And it's another link to the article. Defendant
10 says no shit, that's unreal.

11 Q The next one.

12 A A direct message between CherylRose and the defendant,
13 March 25, 2016. CherylRose says you're more influential than
14 Glenn Beck. Defendant says holy shit, wow, that's crazy. I
15 love it. CherylRose says I do, too.

16 Q Is it fair to say that there's a number of communications
17 like this in his private messages?

18 A Yes.

19 Q I will just skip ahead to number five.

20 A This say group message, March 25, 2016. Bidenshairplugs
21 says Ricky Vaughn made the list of most important Twitter
22 influencers on the 2016 election, number 107. Another link to
23 the article. Cuckservative says Ricky is more powerful than
24 Chuck Todd. Bidenshairplugs says more powerful than Glenn
25 Beck. Putinzoopark says WTG Ricky.

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1 Q And it continues to the next page.

2 A Putinzoopark says Ricky Vaughn also as powerful as Cher.
3 Bidenshairplugs says and Cher has 3 million followers. Ricky
4 did it with 22,000. Putinzoopark says yes.

5 Q All right. Now, these were all in direct messages and
6 group messages, right?

7 A Yes.

8 Q Did he also repeatedly state this on Twitter as well?

9 A Yes.

10 MR. PAULSEN: Ms. Parshad, if you can skip to 15.

11 A This is a tweet from the defendant. It says the haters
12 are jealous that I am a higher ranker election influencer than
13 they are, as proven by MIT data, sad.

14 Q Now Special Agent Cunder, in the course of your review,
15 did you also review documents where the defendant suggested
16 creating memes and other things to spread around?

17 A Yes.

18 MR. PAULSEN: I'm going to show you Government
19 Exhibit 200-F and move into evidence.

20 THE COURT: For the same proviso.

21 MR. PAULSEN: Yes, your Honor.

22 (Government Exhibit 200F, was received in evidence.)

23 A This is a tweet from the defendant. I'm looking for
24 roughly half a dozen Photoshop experts who wish to join a
25 team. Please respond to this tweet with why you're qualified.

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1 Q Turning to text page.

2 A Another tweet from the defendant. I have an idea for a
3 hashtag that will appeal to the antiwar left. This will be
4 our first project.

5 Q Now, turning the page. Did you review documents where he
6 would privately solicit the creation of memes that he thought
7 would he would be spreading?

8 A Yes.

9 Q Can you read number three?

10 A This is a direct message between the defendant and a
11 Twitter user. Defendant says this is a good quote for one of
12 your image memes. And there's a link to one of the
13 defendant's tweets where he quotes Donald Trump and it says
14 the arrogance of Washington D.C. will soon come face to face
15 with the righteous verdict of the American voter. Twitter
16 user says thank you, I will make it.

17 Q Thank you. On the next page, does it say that somebody
18 created it for him?

19 A Yes.

20 Q

21 MR. PAULSEN: Okay. Now, I'd like to skip ahead to
22 200-G that the Government would ask to move into evidence.

23 THE COURT: With the same proviso.

24 MR. PAULSEN: Yes, your Honor.

25 (Government Exhibit 200G, was received in evidence.)

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1 Q Special Agent Cunder, did you review documents where the
2 defendant attempted to get a hashtag?

3 A Yes.

4 Q We'll get to that a bit more in the context of some of
5 the group direct messages, but did he discuss these things in
6 his regular direct messages, one-on-one?

7 A Yes.

8 Q I'd like to show you first page one of Document 200-G.
9 Can you please read that?

10 A This is a direct message between Baked Alaska on May 12,
11 2016. And the defendant says please help me trend
12 #InTrumpsAmerica. New hashtag starting now.

13 Q Now, does he then jump to a bunch of direct messages with
14 a bunch of different people on that same day?

15 A Yes.

16 MR. PAULSEN: Can you show us 1, 2, 3, 4, and? 5.

17 A This a direct message, May 12, 2016. Defendant says
18 please help me to trend a new hashtag. In Trumps America.
19 Rockprincess says okay. Love it. This is a group message,
20 May 12, 2016. Defendant says please help me trend a new
21 hashtag. In Trumps America. That one guy says, on it.

22 THE COURT: I take it that the next ones have the
23 same thing at the top? Probably don't need to keep reading
24 that, if that's okay.

25 MR. PAULSEN: Sure, that's fine.

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1 Q Special Agent Cunder there's a number of them like this;
2 is that right?

3 A Yes.

4 MR. PAULSEN: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes.

7 MR. PAULSEN: And you can show just the witness on
8 the screen, but I'll bring a piece of paper as well. It's
9 Government Exhibit 500.

10 Q Special Agent Cunder, do you recognize that document?

11 A Yes.

12 Q What is that?

13 A This is a chart that documents the various use of a
14 hashtag by two of the defendant's Twitter accounts. And it
15 specifies a date range and a number of tweets that were posted
16 by the defendant using that hashtag. Below that, there's
17 also retweets between the defendant and another Twitter user.

18 Q Focusing on the top half, did you review the statements
19 in this chart to make sure they were true and accurate?

20 A Yes.

21 Q So in each case where there was a hashtag used, you
22 looked to see what account pushed it, what the date range was,
23 and the number of times it happened; is that right?

24 A Yes.

25 MR. PAULSEN: Your Honor, we'd move to have this

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1 exhibit admitted.

2 THE COURT: Any objection?

3 MR. FRISCH: Can I have a moment with Mr. Paulsen?

4 THE COURT: Sure.

5 MR. FRISCH: Thank you.

6 MR. PAULSEN: Your Honor, we're going to set this
7 aside for a moment and we'll come back to this portion. Bear
8 with me for a second, your Honor.

9 THE COURT: Sure.

10 Q All right. Special Agent Cunder, in addition to the
11 materials that you've reviewed with the Court today, did you
12 review any documents in which the defendant revealed some
13 personal facts about his identity?

14 A Yes.

15 Q This was within the three accounts that were in the
16 stipulation? Ricky 99, the Ricky Vaughn. And the return of
17 RV?

18 A Yes.

19 Q In the course of all of the documents you've seen, did
20 you ever see any documents where the defendant revealed his
21 actual true name?

22 A No.

23 Q Other than the true name though, did you see bits of
24 information that related to the defendant?

25 A Yes. He referenced his age, as being 27. He referenced

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1 the fact that he was originally from Vermont. He mentioned
2 going to school at Middlebury. He mentioned living in
3 Manhattan, specifically the Upper East Side. And he also
4 referenced his best 800-meter time as being two minutes and 1
5 second.

6 Q So various facts about him, the person without his name?

7 A Yes.

8 Q Did he also discuss e-mail accounts or Facebook accounts
9 among the various Twitter accounts such that you could match
10 those up?

11 A Yes. He would reference sometimes a Facebook or another
12 account where users could connect with him.

13 MR. PAULSEN: Now, your Honor, I'd like to read two
14 stipulations right now.

15 THE COURT: Sure.

16 MR. PAULSEN: The first one is Government
17 Exhibit 903. The parties agree that Middlebury is a college
18 in Vermont. Doug Mackey was a student at Middlebury from
19 fall 2007 to spring 2011 . And Douglass Mackey ran cross
20 country on Middlebury's track team. Track and field team,
21 excuse me. Among the events Mackey participated in was the
22 800-meter race, which he ran on multiple occasions. His best
23 recorded time in the 800 meters was 202.13.

24 And your Honor, the Government moves admission of
25 Government Exhibit 903.

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1 THE COURT: All right. That's in evidence.

2 (Government Exhibit 903, was received in evidence.)

3 MR. PAULSEN: And then second Government Exhibit

4 904. The parties agree that on November 1, 2016, and

5 November 2, 2016, the defendant resided in an apartment

6 located on Lexington Avenue in Manhattan, New York City and

7 was physically present in Manhattan, New York City throughout

8 those same days. And we move this into evidence as well.

9 THE COURT: Okay. That's in evidence.

10 (Government Exhibit 904, was received in evidence.)

11 Q Okay. Special Agent Cunder, I'd like to show you some
12 different documents right now. We're going to return back to
13 this Document 200 in a little bit. But I'd first like to show
14 you now what's been marked as Government Exhibit 400, one of
15 the group messages.

16 Do you recognize this document?

17 A Yes.

18 Q Was the defendant a member of this group chat at the
19 place where you're about to start reading?

20 A Yes.

21 Q And so he was either a participant or a listener when,
22 for the time periods that you're about to describe; is that
23 right?

24 A Yes.

25 MR. PAULSEN: Your Honor, the Government moves

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1 admission of Government Exhibit 400, subject to the previous
2 objections.

3 THE COURT: All right. Subject to the previous
4 discussions.

5 (Government Exhibit 400, was received in evidence.)

6 Q Now, I'd like to show to this the jury. What is this
7 group called, Special Agent Cunder?

8 A War room.

9 Q And when was this group message started ?

10 A This shows August 1, 2016.

11 Q Now, I'd like you to start reading from the top and I'll
12 ask you questions as we go forward.

13 A Twitter user JaredWyand says new game. We're going to
14 get hit with anti-Trump hashtags every day. And if we all
15 stay on defense, we'll lose. We need to get a couple
16 defensive tweets into the hashtag top tweets, and then hijack
17 it going on offense to attack Hillary about anything and
18 everything. We get dramatically more retweets than the other
19 side so we can take them over whenever we want. And when you
20 see someone on our side in top tweets for a hashtag attacking,
21 retweet them so they stay there. We'll have to work together
22 like a unit, so let's keep this group open and use it like our
23 strategic war room. RepublicanChick says deal. I feel
24 special to be in such an elite group. ImmigrationX says will
25 do. Kinni says you're on. I agree 100 percent, she's paying

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1 her trolls and Twitter is on her side. Let's make sure we all
2 follow each other so we have each others back and all bases
3 are covered.

4 Q Okay, the next page.

5 A Republicanchick says, she is going to try to rig the
6 general elections like she did in the primaries. We can't
7 allow that. JaredWyand says let's keep this room free of
8 tweets, just strategy. Twitter user says, I don't see top
9 tweets for a hashtag on PC. ImmigrationX says got it, Jared,
10 thanks for setting up. How about this for the group photo
11 icon, and there 's a link to an image.

12 Q Okay. Next page.

13 A JaredWyand says and top tweets means top tweets for
14 hashtag. With another link.

15 Q And what is the link that they' re showing?

16 A Hashtag Trump debate excuses.

17 Q Sent by who?

18 A NIA4Trump.

19 Q Okay. Can you turn to the next page?

20 A JaredWyand says another thing is don't waste time, don't
21 waste time starting hashtags unless you have everyone in on
22 it. Twitter is going to suppress them anyway. And don't use
23 multiple hashtags in a post. You get docked relevancy for
24 that. Really should be focusing our tweets on trends and
25 targeting them individually. That's where the front lines are

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1 and the people we need to sway. Immigration X says thanks,
2 Jared. I had no idea Twitter docks for multiple hashtags.
3 RepublicanChick says, Jared give us an example of how we have
4 word it so we get the idea. Defendant says the best way to
5 manipulate the anti Trump hashtags is just to spin them into a
6 positive rather than wining or complaining. Example.
7 RepublicanChick says got it. Defendant posts a link to one of
8 his tweets where he hashtags Trump debate excuses and says
9 building a wall instead. Immigration X has a check mark.
10 Defendant says another example with another link for a hashtag
11 Trump sacrifices. Irmahinojosa says thank you, makes sense.
12 RepublicanChick says thank you. JaredWyand says exactly
13 Ricky. Defendant says no problem.

14 Q If I can pause you there for a second.

15 MR. PAULSEN: Your Honor, I'm going to go back to
16 the document that I showed the witness a moment ago,
17 Government Exhibit 500. We move admission.

18 THE COURT: No objection?

19 MR. FRISCH: Correct.

20 THE COURT: All right. That's in evidence.

21 (Government Exhibit 500, was received in evidence.)

22 Q Special Agent Cunder, to recapitulate a bit. This was a
23 chart in which you would look at a specific hashtag that was
24 discussed and to see what the defendant did; is that fair to
25 say?

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1 A Yes.

2 Q The last two pages, there were two hashtags around
3 August 1st. It was a Trump sacrifices and Trump debate
4 excuses. Did you look those up?

5 A Yes.

6 Q What did you determine?

7 A For Trump debate excuses between July 31, 2016, and
8 August 1st, the defendant used that hashtag in seven of his
9 tweets. For Trump sacrifices between July 30th and July 31st,
10 the defendant used that hashtag in nine of his tweets.

11 Q So this is kind of exact when the room is talking about
12 it, right?

13 A Yes.

14 Q A moment ago we skipped, but I'll just cut to the quick.
15 There was some documents, some direct messages where he
16 discussed the hashtag in Trumps America, right?

17 A Yes.

18 Q Did you look that one up?

19 A Yes.

20 Q That discussion was on May 12th?

21 A Yes.

22 Q When he was direct messaging a number of people?

23 A Yes.

24 Q Did the defendant use that hashtag that day?

25 A Yes.

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1 Q What did you determine?

2 A He used it 25 times.

3 MR. PAULSEN: All right. I'd like go back to the
4 war room, Ms. Parshad, and start on page seven.

5 A This is from August 1, 2016. AmericanMex says I notice
6 these bullshit hashtags and how we can dominate. Defendant
7 says are already dominating them. AmericanMex says targeting
8 lies about dems and minorities. Kinni says what do you guys
9 think about addressing and attacking voter fraught? I think
10 Trump will win, but this has me worried. And I want us and
11 Trump to address it before it happens. You know globalists
12 will push this to get the witch elected. Defendants says it's
13 hard for us to attack voter fraud. It has to be the job of
14 lawyers and state parties. Kinni says this is what this group
15 is about will. And it's a reiteration of --

16 Q This is the same passage that you read at the very
17 beginning?

18 A Yes.

19 MR. PAULSEN: Turn to the next page.

20 A Also from August 1st war room. It's about strategy and
21 ideas and how to combat the anti Trump hashtags and hijack
22 them. AmericanMex says Microchip get banned again?
23 VivaLaAmes says no, he's back. I just talked to him
24 yesterday. AmericanMex says I noticed his followers are
25 down. VivaLaAmes says yeah he was banned, ha.

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1 Q Special Agent Cunder, is Microchip in this group?

2 A Yes.

3 Q We'll get to that no a moment. You can continue to read.

4 A Rockprincess says someone make sure to drop the hashtags
5 we're high jacking in here. WDFX2EU5, which is a Microchip
6 account says sounds good, Jared. We'll have more set up by
7 way of massive pushing here shortly.

8 MR. PAULSEN: All right. Next page.

9 A Twitter user says wait, aren't we supposed to not push
10 tweets on here. Microchip says yeah. Not pushing here, I'm
11 talking retweets of our own tweets, and additional tweeters
12 in the hashtag. And yes, I have to restart the big pushes,
13 not done any since about two and a half months ago. Time to
14 start it again. Vendetta says all right, I'll put some stuff
15 on that tag. Microchip says you may not see this unless you
16 have full US nationwide trends up, but this is trending
17 nationwide. Hashtag Trump debate excuses. And he posts a
18 link.

19 Q Is that one of the hashtag you just checked and confirmed
20 that the defendant was using at this moment?

21 A Yes.

22 MR. PAULSEN: Can you turn the page?

23 A Microchip says you won't this in some local trends lists
24 , but that should probably be targeted right now, since it's
25 likely it's trending in the majority of areas in USA.

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1 Vendetta says I'm seeing Trump debate prep show up in auto
2 complete now. A user says is trending hashtag Trump debate
3 excuses? Vendetta says, yeah we're flooding that with our
4 stuff. Doing pretty well. Defendant says how did you make
5 the chart? VivaLaAmes Says hey Ricky. Screenwriter says just
6 caught up reading the backlog. Love how @RickyVaughn99 turns
7 hashtags around on themselves. A great strategy. I'll push
8 some ideas. If anyone needs some memes baked fresh, make
9 requests here. Good group.

10 MR. PAULSEN: All right. Can you turn to the next
11 page?

12 Q This is about week later on August 5th. August 9th,
13 rather?

14 A We need to really start the push for hashtag Hillary
15 Clinton now. Defendant says please follow shitlord candidate,
16 who is triggering his shitlib opponent. MA State Senate head
17 said he is not welcome in the legislature, LOL.

18 MR. PAULSEN: Okay. Now jumping ahead a bit, can
19 you turn to page 12?

20 A This is from December -- sorry. September 2, 2016.
21 BasedMel says if our army would just get organized, we can
22 quickly trend something. HalleyBorderCol says those two are
23 far more popular than hashtag Hillary's memory. Makada says
24 I will use hashtag Clinton's memory. I was using hashtag sick
25 Hillary. Halley says okay, well it's up to you guys. I

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1 thought I would mention it in case you wanted to add any more
2 people. Those are some of the bigger accounts which I thought
3 may help out getting stuff trending, et cetera. Number three
4 for me. And a link.

5 Q Now, I know it's a bit hard to read, but does that number
6 three says hashtag Clinton's memory?

7 A It appears so, yes.

8 Q Now, did you check --

9 MR. PAULSEN: Let me rephrase.

10 Q Did the defendant say anything at this moment in the
11 group?

12 A No.

13 Q So it would be under blue if he was talking; is that
14 right?

15 A Yes.

16 Q Did you see if he was pushing Clinton's memory at that
17 moment?

18 A Yes.

19 Q What did you determine?

20 A Between September 2nd, and September 3, 2016, he used
21 that hashtag in 35 of his tweets.

22 Q So he didn't say anything, but he was still using that
23 hashtag is that right?

24 A Correct.

25 MR. PAULSEN: All right turning the page to 13.

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1 A This is from September 24, 2016. Microchip says glad to
2 be back, they just banned me two times in three minutes. Be
3 careful. Irmahinojosa says glad you're back. Microchip says
4 13th times is the charm. I'll follow you back when I can.
5 They a limit that is auto detected for new accounts. When you
6 follow too aggressively at the start, but it will catch up
7 soon. BasedMel says just sent out a shout out for you, Micro.
8 Microchip says thanks, Mags.

9 MR. PAULSEN: Turning the page.

10 A This is from September 27th. BasedMel says you see this
11 shit? Only 2,300 tweets and it's number two. Fucking
12 Twitter. And another link.

13 Q And which is the hashtag that's trending, they think
14 unfairly?

15 A It's hard to see this. I'm with her.

16 Q Okay.

17 MR. PAULSEN: If you can turn to page 15.

18 A This is from September 30, 2016. Defendant says ha, ha.
19 The MSM is so dumb. They're throwing too many scandals at
20 Trump at once. They're just confusing armies.

21 Q Special Agent Cunder, if we can turn to page 16. You had
22 testified earlier you gave a date range when the defendant got
23 kicked out Twitter the first time; is that right?

24 A Yes.

25 Q Do you have that stipulation on hand in front of you or

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1 do you remember around when that time was?

2 A October 5th.

3 Q Can you read page 16?

4 A It's from the group chat war room. October 6, 2016,
5 Vendetta says RIP Ricky. He's still on Facebook at deplorable
6 Vaughn. One N. Dochartdc says got to follow him on FB.

7 Q I believe you testified earlier that the Facebook account
8 stayed somewhat consistent across all of the accounts; is that
9 right?

10 A Yes.

11 Q All right. Now turning the page to 400-17. The
12 defendant is not in the group again at this moment; is that
13 fair?

14 A Correct.

15 Q Can you read?

16 A This is from October 8, 2016. Kinni says let's hit it,
17 hashtag Podesta e-mails, and there's a link to United States
18 trends. Makada says will hammer Podesta more, didn't see it
19 trending.

20 Q Turning the page.

21 A BasedMel -- October 9, 2016. BasedMel posts a link with
22 an image to a Deplorable Vaughn account. Dochart says so
23 permanent ban, correct? BasedMel says not sure, but we can
24 get him most his supporters that matter, once they know it's
25 him.

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1 MR. PAULSEN: Ms. Parshad, can you zoom in on what
2 appears to be a screen shot of a conversation with the
3 defendant on his Facebook account?

4 Q Can you read that?

5 A Yes. So it says hey, this is Mags, how have you been
6 bro? So upset Twitter booted you. Deploable Vaughn users
7 says, hey Mags. I'm good. Been chilling the past few days.
8 Stay strong on there, brother. The other user says totally.
9 When you get back on Twitter, I can invite you back on all of
10 the groups. Just give me your handle.

11 MR. PAULSEN: All right turning the next page. At
12 the top, there's a continuation of that conversation.
13 Ms. Parshad, can you zoom in on that?

14 A The Deploable Vaughn user says will do. I'm going to
15 have to figure out a way of doing this without getting banned.
16 I will keep you posted. The Mags user says at the Ricky
17 Vaughn, you? Deploable Vaughn user says, yep, follow that
18 up.

19 Q And what's said after that?

20 A In the Twitter war room group chat from October 11, 2016,
21 BasedMel says Ricky Vaughn's new account. Please add him.
22 Kinny says done. Thumbs up emoji. Dochartdc says at the
23 Ricky Vaughn.

24 Q And the top of the next page?

25 A October 12, 2016. BasedMel says okay, he's added.

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1 Hrtablaze a says yo Ricky. Fist pump emoji. PotusTrump says,
2 everyone, we need to come together and make hashtag Podesta
3 e-mails three trend. Hrtablaze says news last night said that
4 the next 27 days is Trump and his social media army versus
5 the mainstream media machine. He said we must expose who the
6 real HRC is and that's what we will do. MAGA team hashtag
7 patriots united, hashtag America first. Kam says huge, I'm
8 going to take some of your tweets and add hashtags to them.
9 Microchip says don't hashtag them. If you break the info,
10 that takes up whole space, the meaning is lost. If you
11 hashtag them, quote tweet them. These are autistic detailed
12 tweets. The information and spin I'm laying into them.

13 Q Special Agent Cunder, there was a hashtag that was
14 suggested a moment ago it was Podesta e-mails during the time
15 when the defendant was briefly out. Did you check to see
16 whether the defendant ended up pushing that one as well?

17 A Yes.

18 Q What did you determine?

19 A From October 12th to October 13th, the defendant used
20 that hashtag in 18 of his tweets.

21 MR. PAULSEN: Okay. All right turning the page to
22 21.

23 A From October 12, 2016, Microchip says oh, I'm getting
24 coverage. There's no trending tags right now /I'm not sure
25 what you plan on trending. We have not trended in days.

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1 BasedMel says, I think if we just keep talking about it, it
2 leak to the general Twitter-verse. PotusTrump says yeah. But
3 if those people who see your tweets majority are already
4 voting Trump. I'm saying we need CNN and liberal news forced
5 to cover it for dems and independents to see. Microchip says
6 yep. I'm using the top tag now. PotusTrump says operation
7 make hashtag Podesta e-mails four trend. If we all focus on
8 making a friend and telling our followers to make a trend,
9 it's cake from there.

10 Q Special Agent Cunder, is the defendant says anything
11 right now in this conversation; to your knowledge?

12 A No.

13 Q They just said make Podesta e-mails four a trend; is that
14 right?

15 A Yes.

16 Q And this is October 12th?

17 A Yes.

18 Q Did you check to see if he did anything with Podesta
19 e-mails four?

20 A Yes.

21 Q Did he trend it on that -- did he push it on that day?

22 A Yes.

23 Q How many times?

24 A Four.

25 Q Turning to the next page.

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1 THE COURT: You've got to slow down a little bit on
2 your read. It's just very hard on the court reporter.

3 MR. PAULSEN: Apologies, your Honor. So we're on
4 page 22 .

5 A This is from October 12, 2016. KAMTV says Hillary's
6 campaign slogan was going to be hashtag forward together. We
7 should use it. Microchip says we're hitting levels that have
8 never been reached before. Keep pushing hard, and there's a
9 link to your tweet activity. Microchip says this is spreading
10 everywhere. Trying it hit five million today. You guys
11 should see a massive uptick in your impressions as well.

12 Q Okay. Turning to the next page.

13 A From October 12, 2016. Viva says love that blacks for
14 Trump is trending. HalleyBorderCol posts a link to United
15 States trends. Push it. Let's get it higher up.
16 Michelle4trump says we should post all of the Wikileaks.
17 Everyone is forced to see them. There goes their lame attempt
18 to distract from the e-mails.

19 Q Okay. The next page, 24.

20 A From October 13, 2016. PotusTrump says tell every group
21 you're in to push that hashtag Wikileaks trend. Literally
22 tell your followers to help us trend it.

23 Q Pausing you there, Special Agent Cunder. Did you check
24 to see whether on or and that day, the defendant was pushing
25 the hashtag Wikileaks trend?

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1 A Yes.

2 Q Who did you determine?

3 A He used it five times.

4 Q On that day?

5 A Yes.

6 THE COURT: Don't forget about the microphone there.

7 MR. PAULSEN: Sorry, your Honor. You can go on,
8 Special Agent Cunder.

9 A HalleyBorderCol posts let's push hashtag next fake Trump
10 victim. Okay. Telling other rooms now, let's get it
11 trending.

12 Q Pausing you again, Special Agent Cunder. Did he act on
13 that one?

14 A Yes.

15 Q How many times did he push that one?

16 A 20.

17 Q Also that same day?

18 A Yes.

19 Q Is he saying anything at this moment?

20 A No.

21 Q Can you please go on.

22 A Microchip says just keep sowing doubt. That's all that
23 needs to happen. BasedMel says that should be the next push
24 tomorrow. Microchip says this will not only piss off
25 liberals, but will also calm everyone else down. The Trump

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1 tapes. Tell people that this leak today was the same as the
2 Trump tapes leaks.

3 Q Okay. Next page.

4 A Still from Microchip. When you show the similarities,
5 the mind will take the easiest path and say heh, yeah, same
6 damn thing. Kam says you do. We strategize Trump ground game
7 and put tweets in. Plus, we have professional meme makers in
8 there and some campaign. HalleyBorderCol says we haven't been
9 able to get anything to trend for ages. Unless they change
10 their algorithms, they must be watching what we're doing.
11 I'll say I'm new to Twitter and only signed up to help get
12 Hillary elected. This person inspired me. They act like they
13 support Stein, but really support Trump and there's a screen
14 shot.

15 Q Turning to the next page, 26.

16 A From October 17, 2016. HalleyBorderCol says so many
17 others all sending classified info to and from an unsecured
18 private server. Microchip says I don't think. Posts a link.
19 This is anon, but they have not been right yet, so I doubt it.
20 Here's the files. Download files and unzip. Check with hash
21 before hand, but if this is the case, I'll tell you. Keeping
22 my eyes peeled. Defendant says, so tired of anons and other
23 spreading unconfirmed rumors.

24 Q So this is the defendant responding to Microchip?

25 A Yes.

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(Continued on the next page.)

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1 BY MR. PAULSEN:

2 Q Can you turn to page 27?

3 A From October 27, 2016, still in the group chat War Room.

4 HalleyBorderCol says: Let's depress illegal voter turnout
5 with a nice hoax.

6 POTUSTRump says: I like that idea Halley, but I
7 think we should wait for the day before or day of. That way
8 they don't have time to debunk that rumor.

9 Vendetta says: Needs to be earlier than that.
10 People vote early and we need time for rumor to spread.

11 HalleyBorderCol says: Donald, I don't think that
12 makes any difference. People aren't rational. A significant
13 portion of people who hear the rumor will not hear that the
14 rumor has been debunked, and even if they do, they might not
15 trust it. Big risk to take.

16 Q Pausing there for a second. So the person who is saying
17 the people aren't rational, and people hear the rumor will not
18 necessarily hear it's debunked, that's HalleyBorderCol,
19 correct?

20 A Yes.

21 Q If you could read the next part?

22 A Microchip says: There is a whole series of 4chan
23 tactical nuke memes like this, and a link.

24 Q What is 4chan?

25 A A messaging board.

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1 Q Turning the page to 28.

2 A October 27, 2016.

3 Q Yes, that's right, page 28, but October 27.

4 A Microchip says: #DraftOurDaughters, are you ready for a
5 3,000 year nuclear winter? #ImWithHer #EnlistForHer
6 #FightForHer via @RobbyMook and @HillaryClinton. It's all
7 part of the deep psyops meme war. It scares the shit out of
8 people, including the White House too.

9 The next day ShawnMichaelR posts: @Microchip
10 account: For you Micro, with a link. There is an image of a
11 meme, it says: Only Hillary is strong enough to tackle
12 Russian aggression. Preregister for the draft today.
13 #FightForHer #EnlistForHer.

14 Microchip says: Yeah 4chan rocked this.

15 Q This is the same 4chan you mentioned a moment ago?

16 A Yes.

17 Q If you could read one more page?

18 A From October 28, 2016. Microchip says yeah: That's
19 true. I like the warmonger angle. Some of these memes
20 alienate women, so sift through them. We want the war
21 message, not the female shouldn't be what they want to be
22 angle, at least in my opinion. I'm a dude, so I have no idea.
23 Memes*, they are popping everywhere.

24 Twitter user says: #DraftOurDaughters trending.
25 Let's hit her hard as a war hawk.

1 NeilTurner posts a link. There is an image
2 underneath it.

3 BasedMel says: I'm going to be ninja today. Not
4 much tweeting. I need to design some memes and shit.

5 THE COURT: This might be a good time to break, to
6 give the jurors a little opportunity to stretch their legs.

7 We'll break for ten minutes. Don't talk about the
8 case at all, about anything to do with the testimony. We'll
9 see you in ten minutes.

10 (Jury exits the courtroom.)

11 THE COURT: Everyone can have a seat. You can step
12 down.

13 (Whereupon, the witness steps down.)

14 THE COURT: I think my law clerks gave everybody a
15 copy of the charge. I don't think it's especially realistic
16 to try to talk about it today. I feel like you might be
17 concentrating on other things. So I think it might make more
18 sense for you to be able to take time to look at it and we can
19 talk about it tomorrow. We'll figure out a time. Does that
20 sound like a good plan?

21 MR. PAULSEN: That's our preference too.

22 MR. FRISCH: I do have an application, Judge.

23 THE COURT: Okay.

24 MR. FRISCH: I didn't want to interrupt Mr. Paulsen.
25 Early on in the witness's testimony he testified about --

PROCEEDINGS

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1 MR. PAULSEN: Your Honor, the witness is still here.

2 THE COURT: He should probably step out. It would
3 not be a problem, but go ahead.

4 MR. FRISCH: He testified to, I think he testified
5 to, Twitter's use of the UTC time stamp. He just was asked
6 and he said, that's the use, the time stamp, without any
7 foundation. He's not a Twitter witness, he's a FBI Special
8 Agent. I move to strike the testimony.

9 THE COURT: Didn't the Twitter person testify about
10 that yesterday?

11 MR. PAULSEN: My recollection is that Mr. Frisch
12 asked her and she didn't know.

13 THE COURT: Okay.

14 MR. PAULSEN: Your Honor, I can ask a better
15 foundational question. The raw materials state that it is,
16 it's written in UTC format.

17 THE COURT: I mean, I don't know why you couldn't
18 stipulate to what it is. Do you happen to know what the
19 answer is?

20 MR. FRISCH: I don't.

21 MR. PAULSEN: It's UTC. Your Honor, I asked the
22 question because my review of the records with Special Agent
23 Cunder is that is the case. I can point out to the defense
24 counsel how one figures that out.

25 THE COURT: See if you can work it out. If you

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1 can't, we'll figure something else out.

2 (Brief recess.)

3 THE COURT: Please be seated. Are we ready for the
4 jury?

5 MR. PAULSEN: Yes, your Honor.

6 (Jury enters the courtroom.)

7 THE COURT: You may be seated. We are ready to
8 proceed.

9 One thing I meant to mention to you because we
10 didn't start in this courtroom, I cannot control the
11 temperature in here. It's either really hot or really cold.
12 I think it's better to have it cooler so you're not falling
13 asleep. I don't have a whole lot of control over it. It's a
14 good thing to prepare, if you need a coat, if you feel a
15 little bit chilly. Sorry about that.

16 Go ahead.

17 MR. PAULSEN: Thank you, your Honor.

18 THE COURTROOM DEPUTY: The witness is reminded he's
19 still under oath.

20 THE WITNESS: Yes.

21 BY MR. PAULSEN:

22 Q Special Agent Cunder, I think we left off on page 29 of
23 Government Exhibit 400. So just in the middle where it starts
24 with the hashtag.

25 A Twitter user says :#DraftOurDaughters is trending. Let's

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1 hit her hard as a war hawk.

2 NeilTurner posts a link with an image underneath it.

3 BasedMel says: I'm going to be a ninja today. Not

4 much tweeting. I need to design some memes and shit.

5 Q Can you zoom in on the picture that is shared,

6 Ms. Parshad?

7 Is that the #DraftOurDaughters that you're looking
8 at?

9 A Yes.

10 Q In addition to the messages in this group chat, did you
11 look to see if pursuant to the chart that we talked about
12 before, whether the defendant had sent any Draft Our Daughters
13 materials around that time?

14 A Yes.

15 Q What did you find out?

16 A From October 28 to October 31 he used that hashtag in 39
17 in his tweets.

18 Q So 39 times over the next three days?

19 A Yes.

20 Q Did you review some of the instances of those?

21 A Yes.

22 Q Are some of the instances I'm about to show you, are
23 these just a sample of the ones that came up?

24 A Yes.

25 MR. PAULSEN: If I could show the jury Exhibit 401

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1 subject to the prior understandings?

2 THE COURT: Subject to our prior discussions.

3 Q If you could read this Special Agent Cunder?

4 A This is a retweet from the defendant. He's retweeting
5 one of the Microchip's tweets. It says: We voted for her,
6 now we fight for her, nuclear war is our future.

7 #DraftOurDaughters #ImWithHer, via @RobbyMook and
8 @HillaryClinton.

9 Q The next page?

10 A This is another retweet from the defendant retweeting
11 @Altright_Anew. The tweet says: Nice home, husband and kids?
12 Not for us war #DraftOurDaughters. Below is an image of four
13 women. It says: They are ready to go for her, are you?

14 Q The next one?

15 A Retweet by the defendant of @Mia4_trump
16 #DraftOurDaughters in Hillary's America it's our turn, women's
17 rights and all, so go ahead #ImWithHer. Preregister your
18 little girls today. There is an image underneath.

19 A retweet of the defendant @Raisin: Just saw this
20 at Uni #DraftOurDaughters. And there is a link and an image.

21 Q Jumping to the next, page five?

22 A Retweet by the defendant of @Rockum_sockum: Are you
23 woman enough to die for your country? Show your support
24 #DraftOurDaughters, with a link and image.

25 Q The next page, number six?

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1 A This is a tweet from the defendant. It says: Did you
2 know that women are only 2 percent of combat troops. End the
3 gender gap #DraftOurDaughters today.

4 Q We'll do the next two, then we'll skip. If i can show
5 seven and eight?

6 A This is a retweet of Microchip: Soon #DraftOurDaughters
7 #enlistforher #fightforher #imwithher
8 #nuclearwarwithRussianow.

9 Q And the finally, if you can do number eight?

10 A Retweet of @anonie3rd. It's referencing Microchip's
11 account, HalleyBorderCol's account, and Buzzfeed with a link.
12 An image that says: Black lives never mattered more
13 #DraftOurDaughters.

14 Q Special Agent Cunder, this is actually a tweet from
15 HalleyBorderCol; is that right?

16 A Yes.

17 Q So she's also -- the last two were HalleyBorderCol
18 sending things to retweeting Microchip; is that right?

19 A Yes.

20 Q There is several more from the defendant; is that right?

21 A Yes.

22 Q Skipping ahead to page 11. Can you read this one?

23 A This is a tweet from Microchip. It says
24 #DraftOurDaughters keep it trending until November 9. It's
25 working. Production guide and resources inside. There is a

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1 link.

2 Q Ms. Parshad, can you zoom in on the top?

3 If you can read that as best you can the top?

4 A If you move it over to the left, it's cut off.

5 DraftOurDaughters thread keep them coming like a fire hose.

6 Now is the time we have only a little over a week remaining.

7 Download official font, there is the link. Then it says

8 colors red, a number; light blue, number; dark blue, number.

9 Reminder, this is not a forced meme, this is real life.

10 Q If I could turn back to document 400. In summary Special

11 Agent Cunder, the ones you showed involved retweets or

12 references to Mia4trump, HalleyBorderCol, Microchip and the

13 defendant of course; is that right?

14 A Yes.

15 Q If you can turn to page 30?

16 THE COURT: Make sure you don't drop your voice.

17 MR. PAULSEN: Yes, your Honor.

18 Q Turn to page 30. What is this?

19 A This is from the War Room group chat, October 29, 2016.

20 NeilTurner says: Holy shit, LOL. There is a link to an

21 article from the Independent. The headline for that article

22 is ProTrump Twitter bot Neil Turner posts fake image of

23 immigration officer arresting Latino voter. There is an image

24 underneath it.

25 Q Turn to page 31.

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1 A From the War Room group chat. HalleyBorderCol posts a
2 link. There is an image and the image has texts that says:
3 Vote for her. Post Hillary using #PresidentialElection. On
4 November 8 tweet and post the word Hillary using the -- I
5 can't quite make that out.

6 Q If you can zoom in, Ms. Parshad?

7 A Using the #PresidentialElection on Facebook or Twitter
8 between 7:00 a.m. and 9:00 p.m. eastern to cast your vote for
9 Hillary. Stronger together. HillaryClinton.com.

10 Q That's from HalleyBorderCol?

11 A Yes.

12 Q She sends another one?

13 A Yes. She posts an image. The text says: Vote early,
14 text Hillary to 59925 today. There is the Hillary Clinton
15 campaign logo. It says: Paid for by Hillary for President.
16 There is an image of Hillary Clinton as well.

17 Q What does it say on the bottom?

18 A ImmigrationX says in the War Room chat: I see Jack in
19 full force today suppressing hashtags.

20 Q On the next, on this day after the last two, did you
21 review any tweets of the defendant around that time?

22 A Yes.

23 Q I'd like to show you, Ms. Parshad, page 13 of 401.

24 A A retweet which says: I'm hearing rumors that ICE agents
25 are going rogue and will be deporting Mexicans who attempt to

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1 vote November 8.

2 Q The vote by text means that the -- the vote by text means
3 that the defendant posted to Twitter, they happened shortly
4 after the two memes that you saw from HalleyBorderCol?

5 A Yes.

6 Q Are these them?

7 A Yes. This is a tweet from the defendant on November 1st
8 2016 #ImWithHer #GoHillary. There is an image with the text
9 that says: Avoid the line, vote from home. Text Hillary to
10 59925. Vote for Hillary and be a part of history. And there
11 is the Hillary Clinton campaign logo.

12 Q Before these were sent, Special Agent Cunder, was there a
13 discussion in the War Room about the efficacy about these
14 memes?

15 A Yes.

16 Q Showing you page 32. Can you read this?

17 A This is from the War Room group chat on October 30, 2016.
18 Microchip posts a link to one of his own tweets which says:
19 Remember @HillaryClinton voters, on November 8 you can vote
20 from home by #Tweeting #Hillary, this is only set up for
21 @HillaryClinton voters.

22 UnityActivist says: Micro, I like that idea. But
23 what if we made it more believable by acting that it's unfair
24 that they can text and vote and we can't.

25 Twitter user says: Fuck yeah, Greg. Smart.

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1 Microchip says: Yeah, true. Greg, I'm working on
2 it. Let me see what I can come up with.

3 Q Turning to the next page,?

4 A From the War Room group chat October 30, 2016. Microchip
5 says: Here's what I'm worried about, Greg, people on Trump
6 side thinking this is legit and they stay home. I'm plotting.
7 We'll have something soon.

8 Q What is it that Microchip sent to the group that made him
9 concerned and worried about?

10 MR. FRISCH: Objection to form.

11 THE COURT: Sustained as to form. Is there, do you
12 know what it is that he's referring to there?

13 BY MR. PAULSEN:

14 Q Special Agent Cunder, what is it he's referring to when
15 he makes that comment?

16 A This image here?

17 Q Yes.

18 A It's a screenshot of another Twitter user mentioning
19 Microchip's account and that tweet from the Twitter user
20 LaurenNann says: We should do our own for @realDonaldTrump.

21 Q What is sent next by the people in the group?

22 A UnionActivist says: Micro, what if we say something
23 about it's too late because we didn't register for it. We
24 have to do it next election or some election.

25 Microchip says: Yep, I think so, Greg.

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1 Q The defendant is in the group at this point; is that
2 right?

3 A Yes.

4 Q His tweets that you showed a moment ago happened a couple
5 days after this?

6 A Yes.

7 Q Can you turn to page 34? What happens next?

8 A On October 30, 2016, Microchip says: This goes cross
9 site, so it should be big. Just like the #DraftOurDaughters
10 took off. There is a link to one of his own tweets.

11 Q What is down below?

12 A Microchip says: Some folks are being banned right now
13 apparently, so if I'm banned for some reason, I'll be right
14 back. I'll message a few of you and let you know.

15 Q The next page?

16 A November 2, 2016, in the War Room group chat. Hrta blaze
17 says: Chip, be good until November 9, brother. We need your
18 ass.

19 Microchip says: I will. Interesting, didn't know I
20 was flying that high. There is a link to a website.

21 Q Fair to say this website suggests that Microchip's tweets
22 were doing quite well?

23 A Yes.

24 Q If you could turn the page to 36?

25 A From November 2 in the War Room group chat. VivaLaAmes

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1 says: Fuck. Ricky is suspended again. Damn it. I don't
2 want to do this without him here. There is a link to the
3 image and it says account suspended.

4 HalleyBorderCol says: This guy got Ricky Vaughn
5 banned again.

6 Q If you can pause there, Special Agent Cunder. I believe
7 you had testified earlier that November 2 was around about
8 when the defendant got suspended; is that right?

9 A Yes.

10 Q We showed you a moment ago the two tweets that the
11 defendant sent out. I'd like to also show you what has been
12 previously admitted as Government Exhibit I believe 722. Have
13 you reviewed this 2023 before?

14 A Yes.

15 Q Is it correct that the top says Publius Gaius, the name
16 Ricky Vaughn retweeted it?

17 A Yes.

18 Q Were you able to find this retweet in the Twitter
19 materials that Twitter provided?

20 A No.

21 Q Were you able to find either Mia's tweet or the retweet?

22 A No.

23 Q November 3rd, moving on to the rest of the document on
24 page 36, can you read there?

25 A November 3rd in the War Room group chat BasedMel says:

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1 Did Micro get banned? BasedMel says: Sup Ricky.

2 Dochartdc says: Ricky. Ricky is in here, right?

3 Dochartdc posts an eye emoji.

4 Q Next page?

5 A Also from the War Room group chat, November 3rd.

6 YoungDems4Trump sas: He better be.

7 VivaLaAmes11 says: Yay Ricky. I was on a mission
8 to bring you back.

9 Vendetta says: I added him. Busy guy, though. He
10 might check in later.

11 The defendant on November 4 says: Thanks fam.

12 Hrta blaze says: Welcome back, bro.

13 Makada says: Welcome back, Ricky.

14 THE COURT: Slow down.

15 Do we have to go through each one of these?

16 Q Fair to say they are congratulations and happy that Ricky
17 Vaughn is back in?

18 A Yes.

19 THE COURT: I'm going to remind you jurors that all
20 of this evidence will be available during your deliberations,
21 but there is no harm in reading some of it.

22 I just wanted to slow you down and just if there are
23 things that we don't need to repeat?

24 MR. PAULSEN: Yes, your Honor we will try to cull it
25 as we go forward.

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1 Q Skipping ahead to page 39 later that day. What is this?

2 A November 4, in the War Room group chat. The defendant
3 posts a link to one of his tweets where he says: TFW you
4 haphazardly post a poll meme and you winds up on CNN. There
5 is a link to a photo of a CNN, it looks like a CNN on the TV.

6 Q So some coverage of what the defendant had done on CNN?

7 A Yes.

8 Q What did the people say afterwards?

9 A VivaLaAmes says: Ricky, that meme. Ha ha ha.

10 HrtaBlaze says: Jorge fist emoji.

11 Defendant says: LOL.

12 NeilTurner says: Wait, is that really you, Ricky?

13 Q Skipping ahead to page 41. There is more
14 congratulations; is that fair?

15 A Yes.

16 Q Just on 41?

17 A November 4 defendant posts a link. VivaLaAmes says:
18 OMG, Ricky. You know this kicks my Twitter love for you into
19 the orbit. Voter misinformation LOL.

20 Twitter user says: Ricky. Ha ha ha ha, so awesome.

21 Defendant says: LOL LOL, LOL.

22 Q Turning the page, are there a couple of images that
23 suggests Microchip got suspended again and got back on; is
24 that correct?

25 A Yes.

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1 Q Does Micro then return back to the room?

2 A Yes.

3 Q Can you skip ahead to page 45?

4 A This is from the War Room group chat, November 8, 2016.
5 Microchip posts a link. There is an image underneath it.
6 Someone holding up a sign that says: Save time. Avoid the
7 line. Vote from home. Tweet ClintonKaine with the
8 #PresidentialElection on November 8, 2016, between 8:00 a.m.
9 and 6:00 p.m. to cast your vote.

10 Mia4_trump says: I got suspended, Micro for posting
11 a text vote meme.

12 Microchip says: Yeah, I guess don't post those
13 then.

14 Mia4trump says: No, don't. Ricky and I got
15 suspended for that.

16 Q If I could pause you there for a second. A moment ago I
17 asked you to look at Government Exhibit 722; is that right?

18 A Yes.

19 Q That was the one that Mia4_trump sent, the defendant
20 retweeted?

21 A Yes.

22 Q That one you couldn't find in the database of materials
23 that Twitter provided is that, right?

24 A That's correct.

25 Q Is that the same Mia4_trump who said: Don't, Ricky and I

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1 got suspended for it?

2 A Yes.

3 Q Go on.

4 A Mia4_trump continues: Actually, I think Ricky got Milo'd
5 or Micro'd. I got put in time out.

6 Q Does the defendant -- turning the page, we can skip
7 ahead. Does he continue to engage with the group?

8 A Yes.

9 Q Turning to the last page, 47. This is some statements
10 from Microchip?

11 A This is in the War Room group chat, November 9, 2016.
12 Microchip says: We are making fucking history. Maybe an EU
13 election is coming up, we can flip or something. I think I'm
14 going to do this differently for 2020. I may start working on
15 building a bigger bot army over the next four years, better
16 than this last minute stuff. We still have a lot of work to
17 do in order to push Trump to the top and back his policies,
18 but I never want the need to fight this hard again. It was
19 good, but we can get more done with planning. We can keep on
20 raging and taking people down. It's amazing they still
21 haven't figured this out, but right before our eyes, the media
22 is completely clueless. I cannot believe they have not
23 figured out what we did or what I'm doing behind the scenes.

24 Q Special Agent Cunder, I'd like to -- having finished that
25 group chat, I'd like to turn to Exhibit 200 that we discussed

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1 before.

2 The defendant discusses his ability to get back on
3 to Twitter after suspensions?

4 A Yes.

5 Q You reviewed documents to that affect?

6 A Yes.

7 Q I'd like to show you 200-I.

8 A This is a direct message between Twitter user and the
9 defendant November 1st, 2016. Twitter user: Says Ricky.
10 Follow me back again bro.

11 November 2 defendant says: Of course.

12 Twitter user says: Ha ha, thanks man. It's such
13 bullshit that you got suspended. But you have ten thousand
14 already, so it's not that bad. I had 5,000 before they killed
15 me.

16 Q The next page.

17 A November 5, this is a direct message between the
18 defendant and Twitter user. Twitter user says: Ricky we all
19 know this account is you. Might not be a bad idea to use a
20 different name for a while. Or our enemies will go after you
21 and get you banded again.

22 Defendant says: Who cares. I get banned, start a
23 new account, I have 5,000 followers in two days.

24 Twitter user says: I find it annoying that I get
25 banned but I don't have bunch of burner e-mails or cellphones,

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1 nor do I know much about such things, so that's just me. You
2 do you, brother.

3 Q Turn the page to number three?

4 A Direct message between the defendant and the Twitter user
5 November 6, 2016. Defendant says: Thanks friend. Yeah, I
6 just have other people create new accounts for me. Works out
7 that way. What you should do is start three other accounts
8 now for later.

9 Q Then finally the next one.

10 A That was the end.

11 Q I'm sorry. If you turn to J1?

12 A This is a direct message between the defendant and
13 Twitter user November 12, 2016. Twitter user says: Are you
14 the real Ricky? The guy that got suspended multiple times?

15 Defendant says: Yeah. It's me.

16 Twitter user says: The original Ricky. What did
17 you do that got you suspended so many times?

18 Defendant says: Not sure. The first time was given
19 no reason. The second time it was because I posted a meme
20 that told Hillary supporters they could text to vote LOL.

21 Twitter user says: Twitter is so petty.

22 Q Now in the lead up to the -- in the time period that was
23 leading up to the 2016, did you review any documents from the
24 defendant in which he indicated whether he thought it would be
25 a close election or -- whether it would be close?

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1 A Yes.

2 Q I'd like to you to read Government Exhibit 200K?

3 A This is a tweet from the defendant September 4, 2016:

4 @kingrera no definitely not crushing. It's a close race.

5 Consider it a tie, overall.

6 Q The next page?

7 A This is a direct message between Twitter user and the

8 defendant October 31, 2016. Twitter user says: Jesus Christ,

9 Ricky. Any ways, LOL. I think it's all but over. I can't

10 say I'm a little concerned about voter fraud, but I think he's

11 got it locked up.

12 Defendant says: I hope my friend. I'm thinking

13 it's going to be a nail biter.

14 Q This is Special Agent Cunder, am I right this is a day or

15 so before the defendant posted the memes in question in this

16 case?

17 A Yes.

18 Q The next page K3?

19 A This is a tweet from the defendant on November 6. He

20 says: We are in a solid position to win this election. But

21 no one knows who is going to win. Anyone who tells you they

22 do, is a charlatan.

23 (Continued on next page.)

24

25

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1 BY MR. PAULSEN:

2 Q The next page.

3 A Tweet from the defendant on November 7th.

4 The election stands on a knife's edge, don't let
5 anyone tell you otherwise.

6 Q The next one.

7 A Tweet from the defendant on November 7th.

8 There are so many different ways this election can
9 swing. It really does stand on a knife's edge.

10 Q And one more.

11 A Tweet from the defendant on November 7th.

12 @RealTeflonDon : No way, man and it would be a
13 futile endeavor. Eight states are on a knife's edge.

14 Q I don't want have you read all of them, but does he use
15 this "knife's edge" analogy over and over again in describing
16 how close he thought the election was?

17 A Yes.

18 Q Now, during this time, did the defendant make any
19 statements in which he was just generally interested in
20 turnout and turnout of specific populations?

21 A Yes.

22 Q I would like to show you Government Exhibit 200-L.

23 A This is a tweet from the defendant March 19th.

24 Hillary's team is in a panic because black voter
25 turnout in Ohio and Florida primaries was down 40 percent.

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1 Q Next page.

2 A Tweet from the defendant on July 25, 2016.

3 All of these polls assume the electorate will be 52
4 or 53 percent female, while all data indicates female turnout
5 will be lackluster.

6 Q The next page.

7 A Tweet from the defendant on August 30th.

8 There are a lot of ways Hillary can lose this thing.
9 If the electorate skews, older, whiter, more GOP, she's going
10 to be in big trouble.

11 Q Skipping to Page 5.

12 A Tweet from the defendant on September 2nd.

13 The only thing standing in Trump's path is black
14 voters.

15 Q The next page.

16 A Another tweet from the defendant on September 7th.

17 If the Florida electorate becomes more white, more
18 conservative, and more male in 2016 than 2012, Trump will win
19 this thing in a landslide.

20 Q The next page.

21 A Tweet from the defendant on October 17th.

22 Don't be overconfident. Realty is, if HRC gets
23 turnout and if electorate really is heavily democratic, we
24 lose in a landslide doubtful.

25 Tweet from the defendant October 17.

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1 If electorate is Democratic and dems turnout their
2 people, HRC wins.

3 Q Just skipping to Page 12. Is it fair to say there are
4 several more like this?

5 A Yes.

6 Q Page 12.

7 A The defendant tweets on November 2nd.

8 Obviously, we can win Pennsylvania. The key is to
9 drive up turnout with non-college whites and limit black
10 turnout.

11 Q Now, Special Agent Cunder, also around about this time in
12 the lead-up to the election did the defendant just talk
13 generally about using memes for political-related ends?

14 A Yes.

15 Q And Government Exhibit 200-M.

16 A This is a tweet from the defendant June 6th.

17 We're going to need seize memetics to derail the
18 coming mainstream narrative. Get on it, folks.

19 And there's a link.

20 Q The next one?

21 A Tweet from the defendant July 29th.

22 One way to depress turnout is to use meme magic to
23 make not voting for Hillary a cool way for a young people of
24 color and progressives to protest.

25 Q The next one.

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1 A Tweet from the defendant July 29th.

2 A 25-year-old Latino progressive will probably never
3 vote for Trump, but we can depress her enough to stay home, or
4 vote for Jill or Gary.

5 Q All right. The next page.

6 A Tweet from the defendant, July 31st.

7 Very few persuadable voters remain. A lot of what
8 we're doing is just keeping our own team fired up, and trying
9 to demoralize the other team.

10 Q Special Agent Cunder, if you could read pages -- the next
11 page, 5 and 6?

12 A Tweet from the defendant, September 5th.

13 Idea: Create #woke, #BlackTwitter, #nevervote
14 memes, seed them in black social media spaces.

15 Q Did he then do one? There can you read the next page,
16 Special Agent Cunder?

17 A Tweet from the defendant. September 5th.

18 A vote for Hillary just means four more years of
19 Hillary Clinton taking black vote for granted. Send her a
20 message, fam. #nevervote.

21 Q Special Agent Cunder, did you review any Twitter
22 documents in which the defendant stated that he thought some
23 groups were particularly gullible?

24 A Yes.

25 Q Can you show Government Exhibit 200-N?

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1 A This is a direct message between AltRightInfo and the
2 defendant.

3 The defendant says: Exposed how gullible black
4 people are. He was banned for it. Black people literally
5 believed that the KKK was Marching on Mizzou. Most gullible
6 people ever.

7 Q Special Agent Cunder, did he make any comments just
8 generally about low-information voters?

9 A Yes.

10 Q Can you read Government Exhibit 200-N, No. 2?

11 A This is the tweet from the defendant, April 10th of 2016.

12 It's a fool's errand to babble on complaining about
13 low-information voters. Either stay out of mass politics or
14 play the game.

15 Q Finally, did you review any recordings in which the
16 defendant expressed a preference that certain people shouldn't
17 vote?

18 A Yes.

19 MR. PAULSEN: Your Honor, the Government wishes to
20 play about 45-second clip that was discussed earlier.

21 THE COURT: Okay.

22 MR. PAULSEN: It's 1003 -A. This is the --

23 THE COURT: I know what it is. You can play it . I
24 think it's already in evidence.

25 *** Proceedings MR. PAULSEN: It was only

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1 authenticated through Ms. Stephen so we are looking to put it
2 in evidence.

3 THE COURT: All right. Anything you want to say
4 about that?

5 MR. FRISCH: Subject to our prior discussion.

6 THE COURT: Okay.

7 (Video file played in open court.)

8 (Video file concludes.)

9 MR. PAULSEN: So, your Honor, we are now going to
10 move to a second group chat that's smaller but it's still --

11 THE COURT: I think this is probably a good time to
12 break for the day because it's about 5:00 o'clock.

13 So there will be a couple days where we might have
14 to stay a little bit later but I think this is probably a good
15 time to break now.

16 So I don't know if the traffic is going to be like
17 today but I think we should all probably factor to into our
18 plans which I can't control that either, but we can't get
19 started until serve here.

20 I realize that some of you are coming from a good
21 distance away but I really do appreciate your efforts to be
22 here. So please let's shoot for 9:30 tomorrow and please
23 don't talk about the case.

24 Please do not let anyone approach you to speak about
25 the case. Don't read any accounts of this in any form

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1 whatsoever but do have a good night and I'll see you tomorrow.

2 COURTROOM DEPUTY: All rise.

3 (Jury exits courtroom.)

4 THE COURT: Okay. Everybody can sit down. If you
5 can step down.

6 (Witness leaves the witness stand.)

7 THE COURT: All right. Anything before we break for
8 today? Do you know about how much longer you're going to be
9 with this witness.

10 MR. PAULSEN: Is, your Honor, I'm more than half
11 done probably closer to two-thirds done.

12 I can go faster if it's okay to lead him a little
13 bit and skip over things and paraphrase what's happening.

14 THE COURT: Skipping over things is fine. But, he
15 why, I don't want to ask Mr. Frisch to make a blanket
16 agreement that he'll -- if he doesn't have any problem with
17 leading. But I think in sort of noncontroversial ways, I
18 guess you'll agree if you don't agree with it, right?

19 MR. FRISCH: I'm a very reasonable objective if it
20 sounds like it's going to move things along. I'm not going to
21 say thing but I may object if it seems to be over the line.

22 THE COURT: That's fine. I mean, I just think, you
23 know, it's definitely fine to be reading these different
24 things into evidence.

25 I would just be mindful of the extent to which some

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1 of them are repetitive if they, you know, if ten people say,
2 you know, "go," I don't know that we need to hear all of that
3 and they can read it, but I'm not precluding you from reading
4 the things that you think are important. I'm just suggesting
5 just thinking about it a little bit. That's fine. I'm not
6 criticizing.

7 MR. PAULSEN: I appreciate that, your Honor, but we
8 will endeavor to streamline it as best we can.

9 THE COURT: That's fine. Anything else before we
10 break for the day?

11 MR. PAULSEN: No, Your Honor.

12 THE COURT: I will probably send you a little bit of
13 an updated charge just to as I go through it I make some
14 changes so the gist of it won't change it's just that if I go
15 through and try to cross out the passive voice and the overly
16 formal language the charge is difficult enough I don't think
17 we can make it a little more understandable to the jurors.

18 Anything else?

19 MR. PAULSEN: No, Your Honor. Thank you.

20 THE COURT: Thanks so much. See you tomorrow.

21 (WHEREUPON, this matter was adjourned.)

22

23

* * *

24

25

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